
Delaware Register of Regulations

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Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2015.

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Dolores Michels

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.

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2402 Delaware Manual on Uniform Traffic Control Devices.....	18 DE Reg. 779 (Prop.)
2406 Policies and Procedures for Acquisition of Certain Real Property Interests	18 DE Reg. 456 (Prop.) 18 DE Reg. 733 (Final)
2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property Interests.....	18 DE Reg. 545 (Prop.) 18 DE Reg. 734 (Final)
DIVISION OF RESEARCH	
Office of the Registrar of Regulations	
Regulation Governing Administrative Rulemaking Procedures.....	18 DE Reg. 161 (Final)
EXECUTIVE DEPARTMENT	
Office of Management and Budget	
Division of Facilities Management	
Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects.....	18 DE Reg. 550 (Prop.)
4103 Regulation Governing the State of Delaware Asbestos Certification and Training Program.....	18 DE Reg. 547 (Prop.) 18 DE Reg. 736 (Final)
State Employees Benefits Committee	
2001 Group Health Care Insurance Eligibility and Coverage Rules.....	18 DE Reg. 79 (Final)
Statewide Benefits Office	
2007 Disability Insurance Program Rules and Regulations.....	18 DE Reg. 79 (Final)
Office of State Planning Coordination	
Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts.....	18 DE Reg. 359 (Prop.)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

ADMINISTRATIVE OFFICES OF THE COURTS**CHILD PLACEMENT REVIEW BOARD**

Statutory Authority: 14 Delaware Code, Section 3445 (14 **Del.C.** §3445)

PUBLIC NOTICE**Regulations Governing the Ivyane D.F. Davis Scholarship**

The State of Delaware's Child Placement Review Board is submitting regulations regarding the administration of the Ivyane Davis D.F. Memorial Scholarship. This Scholarship was established by the General Assembly in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. The fund is authorized by **Delaware Code**, Title 14, Chapter 34; it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D. F. Davis who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board. The administration of this fund includes monitoring the academic progress of all students as well as a yearly interview and requirement to report expenditures as part of the Child Placement Review Board's Annual Report. This is the first time regulations for this fund have been submitted and was a recommendation from the Joint Sunset Committee in 2012.

There will be no Public Hearing regarding these regulations but Public Comments can be sent, by mail or email to:

Julia M. Pearce
Child Placement Review Board
820 North French Street, 1st Floor
Wilmington, DE 19801
Email: Julia.Pearce@state.de.us

Public comments will be accepted until June 15th, 2015.

Foreword

Ivyane Davis was a woman who believed in children and was committed to helping them succeed. Mrs. Davis was a charter member of the Child Placement Review Board, serving as a Review Board member from the founding of the Board in 1979 until her death in 1989. First and foremost, Mrs. Davis was a mother of five children and a foster parent. In addition, she served as a Court Appointed Special Advocate in the Family Court system and was the chairman of the Fresh Air Program in Delaware. Ivyane Davis was a woman of impressive accomplishments, but she is best remembered for her advocacy work for the well-being of every child. In the nurturing of individuality, the development of talent, and the daily care of children, Mrs. Davis found her life's work.

The Ivyane D. F. Davis Memorial Scholarship honors a remarkable woman by continuing her heritage of offering opportunity to children. The Ivyane D. F. Davis Memorial Scholarship fund was established by the General Assembly of the State of Delaware in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. This scholarship fund addresses the particular financial needs of many children who have been in foster care and offers them the opportunity for higher education.

The Fund awards several scholarships annually in honor of Mrs. Davis, who had a lifelong interest in the welfare of children. Ivyane D. F. Davis Scholarships are administered by the State of Delaware and are awarded to recipients selected by the Child Placement Review Board of Delaware. Scholarships are renewable.

Regulations Governing the Ivyane D.F. Davis Scholarship

1.0 Legal Base and Purpose

As authorized by Delaware Code, Title 14, Chapter 34, it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D.F. Davis, who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board.

2.0 General Provisions

2.1 Definition of Terms

“Child Placement Review Board” means the citizen review board established under Title 31, Chapter 38 of the Delaware Code and will be referred to as the “Board” in these regulations.

The “CPRB Staff” are the employees of the Board designated by the Executive Director of the Board to provide administrative support to the Committee.

The “Executive Committee” is the oversight body for the Board as established in Title 31, Chapter 38, Section 3808 of the Delaware Code.

An “Institution of Higher Learning” is an accredited school that:

- Awards a bachelor’s degree or not less than a 2 year program that provides credit towards a degree,
or
- Provides not less than 1 year of training towards gainful employment, or
- Is a vocational program that provides training for gainful employment and has been in existence for at least two years.

The “Ivyane D.F. Davis Memorial Scholarship”, hence forth referred to in these regulations as the “Scholarship”, is established by state law in Title 14, Part I, Chapter 34, Section 3445 of the state code.

The “Scholarship Committee” is established by the Executive Committee to administer the Scholarship and will be referred to as the “Committee” in these regulations.

2.2 Partnerships and Fund Raising

2.2.1 The Board may accept donations from private individuals and organizations for deposit in the fund.

2.2.2 Chaffee Education and Training Vouchers. A portion of the fund, not to exceed one-half of the fund's principle and interest, may be used to assist the Division of Family Services in obtaining Chafee Educational and Training Vouchers funding; provided, that the Board is authorized, by

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regulation, contract, or memorandum of understanding with the Division of Family Services, to administer the funding obtained. The portion of the Scholarship used as the state match is subject to the eligibility criteria established under the Chaffee Education and Training Vouchers.

3.0 Provisions for Scholarship Administration

- 3.1 Scholarship Committee. The membership of the Scholarship Committee will be established by the Executive Committee annually and will not exceed 4 members. Members shall include at least one active board member, but may also include former board members and other members of the community with expertise that would enhance the expertise of the committee.
- 3.2 Eligibility. Applicants shall meet the following criteria in order to be eligible for award consideration:
 - 3.2.1 Individuals who were at any time under foster care in the State of Delaware, and
 - 3.2.2 Individuals who have been residents of Delaware for at least 1 year immediately preceding the application for funds, and
 - 3.2.3 Individuals who have been accepted at or who are attending an accredited institution of higher learning or trade school, and
 - 3.2.4 Individuals who are not pursuing a degree higher than a Bachelors.
- 3.3 Award Criteria. The committee has the discretion to set the award amount annually based on the students' financial need, their likelihood of success, and the number of applicants to ensure a fair distribution of the available funds.
 - 3.3.1 When determining the award amounts, the Committee will consider the following:
 - 3.3.1.1 Documentation of financial need
 - 3.3.1.2 Previous academic achievements
 - 3.3.1.3 Level and involvement in community service
 - 3.3.1.4 Anticipated academic success in their educational endeavor.
 - 3.3.2 The amount of an award may not exceed the amount of the applicant's school related expenses such as tuition, required fees, room, board, and books at the institution specified.
 - 3.3.3 Adjustments to the award may be made after an award letter has been issued if the student changes their educational plans or enrollment status (i.e. the student enrolls only part-time rather than full time) after the award letter is issued.
- 3.4 Award Process
 - 3.4.1 Completed Application Packet. All applicants must complete a scholarship application packet which includes forms and documents designated by the Committee. The required forms and instructions will be available to the public via the Board's web page.
 - 3.4.2 Application Due Date. Completed application packets are due June 1st for award consideration beginning the following school year and by November 15 to be considered for a mid-year award if funds are available.
 - 3.4.3 Interview. The Committee conducts personal interview of the applicant in the summer prior to the start of each school year. The preference is to interview all applicants, however, it is only required of the first year applicants. Interviews may also be held at other times as necessary. A face to face interview is standard, although teleconferences and video-conferencing may be utilized.
 - 3.4.4 Award Allocation. There is no fixed award amount. The Committee determines the amounts of the award each year based on the available funds and financial needs of the applicants.
- 3.5 Award Distribution
 - 3.5.1 Award letters that reflect the amount of award determined by the Committee are issued to the student by CPRB staff.
 - 3.5.2 Awards shall be dispersed directly to the school or institution and not directly to the student.
 - 3.5.3 Funds are dispersed based on the type of school or institution in which the student is enrolled. Whenever it is reasonable, the funds are distributed in conjunction with the institutions assessment

period (i.e. semesters, terms) so that an assessment of the student's progress may be made prior to subsequent disbursement of the award.

- 3.6 Reporting Requirements. The Board shall report annually to the General Assembly the following:
- 3.6.1 The number of recipients of scholarships.
 - 3.6.2 The institutions attended by said recipients.
 - 3.6.3 The total of expenditures made under this scholarship fund, and
 - 3.6.4 Other information as it deems useful for the members of the General Assembly.
- 3.7 Educational Progress Expectations.
- 3.7.1 To remain eligible for the scholarship, the student must maintain a G.P.A of 2.0 or higher or, earn a "meets expectations" rating or better during job training, required remedial courses (i.e. Basic or Pre-Tech courses) or certificate program established assessment period.
 - 3.7.2 The Board will maintain and distribute a policy that outlines the consequences of failure to meet this standard. This policy is an appendix to these regulations; it will be distributed with the student's award letter each year and will be available to the public via the CPRB web page.

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 **DE Admin. Code** 1001

PUBLIC NOTICE

1001 Thoroughbred Racing Rules and Regulations

Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI rule relating to summary suspensions and stays and to amend Commission Regulation 19.6 relating to Continuances. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the May 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before June 1, 2015. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after June 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed new rule 18.1.5 relating to summary

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suspensions, new rule 19.2.2 relating to stays and amended rule 19.6 relating to continuances or make additional changes because of the public comments received.

1001 Thoroughbred Racing Rules and Regulations (Break in Continuity of Sections)

18.0 Disciplinary Measures

18.1 Disciplinary Measures by Stewards:

(Break in Continuity Within Section)

18.1.5 Summary Suspension

18.1.5.1 If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety or welfare, the stewards may summarily suspend the license pending a hearing.

18.1.5.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his/her right to a hearing on the summary suspension within the three racing -day limit.

18.1.5.3 The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(Break in Continuity Within Section)

19.0 Hearings, Reviews and Appeals

(Break in Continuity Within Section)

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.2.2 Stays

19.2.2.1 A person who has been disciplined by a ruling of the stewards and who has applied under 19.2.1 to the Commission for a review of such Stewards' order or ruling may apply to the executive director for a stay of the ruling until the scheduled hearing date of the Commission's review of such Stewards' order or ruling. If the scheduled hearing date of the Commission's review of such Stewards' order or ruling is continued pursuant to Rule 19.6, the stay will continue to the rescheduled hearing date only upon the approval of the executive director.

19.2.2.2 An application for a stay must be filed with the Commission's executive director not later than the deadline for filing an appeal.

19.2.2.3 An application for a stay must be in writing and include:

19.2.2.3.1 The name, address and telephone number and signature of the person requesting the stay; and

19.2.2.3.2 A statement of the justification for the stay.

19.2.2.4 The executive director may grant a stay for cause. The executive director shall notify the person in writing of the decision. The executive director may rescind a stay granted under this subsection for reasonable cause.

19.2.2.5 The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.

(Break in Continuity Within Section)

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefore and shall be filed with the Commission's ~~Administrator of Racing~~ executive director after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(Break in Continuity Within Section)

19.6.5 The executive director shall have authority and discretion to grant or deny applications for continuance in accordance with these rules.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

14 DE Admin. Code 106A

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. For ease of reading, the regulation is provided in its entirety.

The revisions include, but are not limited to, the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all teachers. This regulation is therefore being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative ratings section and to identify the shift to Annual Appraisal Cycles for all teachers (to begin in the 2016-2017 school year), and to address revisions that arise as a result. The proposed revisions respond to stakeholder feedback by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 5, 2015** to Tina Shockley, Policy Advisor, Delaware Department of Education, 401 Federal Street,

Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the Department or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities for teacher development and student achievement by strengthening and refining the teacher appraisal cycle.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improved teacher appraisal and support across the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the level of authority and flexibility at the local board and school level for the 2015-2016 school year.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendment requires annual appraisals for all teachers to begin in 2016-2017, to effectuate continuous improvement and opportunities for ongoing, individualized coaching and professional development for all educators. New administrative requirements, as proposed, are offset by adjustments to the required number of observations and advent of state-approved online platform systems over the past two years that have been cited as reducing administrative burden in this area. Only Novice teachers and teachers with recent track records of Unsatisfactory performance are currently entitled to Summative Evaluations annually.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments provide further consistency in key areas of the implementation of the teacher appraisal system.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expectation that there will be additional costs to the State or local school boards. Training and materials will likely continue to be developed and refined by state and local leaders on an annual basis.

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2014-15~~ 2015-2016 school year, unless another teacher appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

2.0 Definitions

The following definitions shall be applied for purposes of this regulation:

"Announced Observation" ~~shall consist of~~ means an observation form and conference with the Credentialed Observer, an observation by the Credentialed Observer at an agreed upon date and

time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Board" shall mean a local board of education or charter school board of directors.

"Credentialed Observer" shall mean an individual, not always the supervisor of the teacher, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a teacher's appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

"DASA" shall mean the Delaware Association of School Administrators.

"Department" shall mean the Delaware Department of Education.

"DPAS II Revised Guide for Teachers" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Evaluator" shall mean a Credentialed Observer who is responsible for a teacher's Summative Evaluation. A teacher's required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

"Experienced Teacher" shall mean a teacher who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**; or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Group 1 Teacher" shall mean any Novice Teacher or Experienced Teacher providing instruction in reading and/or mathematics to a student enrolled in any grade three (3) through ten (10) as verified by the State's pupil accounting system.

"Improvement Plan" shall be means the plan that a teacher and Evaluator mutually develop in accordance with 8.0.

"Interim assessment" shall mean an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers and administrators at the student, classroom, school, and district levels.

"Non-Group 1 Teacher" shall mean any Novice Teacher or Experienced Teacher that does not meet the definition of Group 1 Teacher as defined herein and explained in the Guide.

"Novice Teacher" shall mean a teacher who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the **Delaware Code**.

~~**"Satisfactory Component Rating"** shall mean the teacher's performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the **Delaware Code**.~~

"Satisfactory Evaluation" shall be equivalent to the overall "Highly Effective" or "Effective" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

~~**"Short Observation"** shall consist of~~ means an observation by a Credentialed Observer, using the associated conferences and forms, at a date and time that has not been previously arranged. The observation shall be no less than ten (10) minutes, and be limited to specified criteria. Such observations shall not substitute for required observations under Section 3.0.

"Student Achievement" shall mean:

(a) For tested grades and subjects:

(1) Student scores on the state assessment system; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and

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comparable across classrooms. Such alternative measures must be approved by the Department and developed in partnership with DSEA and DASA.

(c) For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any teacher's 2014-15 performance appraisal. This may be extended by the Department for the 2015-16 school year.

"**Student Growth**" shall mean the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"**Summative Evaluation**" shall mean the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations, any additional observations, and required component-level data. At the discretion of the Evaluator, it may also include additional Announced, Unannounced or Short observation data, beyond the required observation data, provided by other Credentialed Observers.

"**Unannounced Observation**" shall ~~consist of~~ means an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of an observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"**Unsatisfactory Component Rating**" shall ~~mean the teacher's performance does not demonstrate an understanding of the concepts of the component.~~

"**Unsatisfactory Evaluation**" shall be the equivalent to the overall "Needs Improvement" or "Ineffective" rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

"**Working Day**" shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycle

(Break in Continuity Within Section)

3.5 Beginning in the 2016-2017 school year, all Teachers shall receive an annual appraisal subject to the following conditions:

- 3.5.1 Experienced Teachers who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation with a Summative Evaluation each year.
- 3.5.2 Experienced Teachers who have received a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.
- 3.5.3 Novice Teachers shall receive a minimum of one (1) Announced Observation and two (2) Unannounced Observations with a Summative Evaluation each year.

(Break in Continuity of Sections)

6.0 Summative Evaluation Ratings

- 6.1 ~~Each Appraisal Component shall be assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.~~ Each of the first four (4) Appraisal Components shall be assigned a rating of "Highly Effective," "Effective," "Needs Improvement" or "Ineffective" on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of "Exceeds," "Satisfactory" or "Unsatisfactory" on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guide for Teachers.
 - 6.1.1 ~~A satisfactory~~ "Highly Effective" or "Effective" rating for each of the first four Appraisal Components shall mean the teacher has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a teacher's Summative Evaluation.

6.1.2 A satisfactory rating for the Student Improvement component shall mean that the teacher has demonstrated acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.

6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement", or "Ineffective".

6.2.1 ~~"Highly Effective" shall mean that the teacher has earned a Satisfactory Component rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth as defined in the DPAS II Revised Guide for Teachers, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation.~~ **"Highly Effective"** shall mean that the teacher has earned an "Effective" or "Highly Effective" rating in the first four (4) Appraisal Components and an "Exceeds" rating in the Student Improvement Component.

6.2.2 ~~"Effective" shall mean that:~~ **"Effective"** shall mean that the teacher has earned an "Effective" or "Highly Effective" rating in at least three (3) of the first four (4) Appraisal Components with zero (0) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.

6.2.2.1 ~~The teacher has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and "Effective" may also mean, in accordance with procedures outlined in the DPAS II Guide for Teachers, that the teacher has earned a "Highly Effective" rating in at least two (2) of the first four (4) Appraisal Components with zero (0) "Ineffective" ratings and an "Unsatisfactory" rating in the Student Improvement Component.~~

6.2.2.2 ~~The teacher does not meet the requirements for a "Highly Effective" rating found in 6.2.1.~~

6.2.3 **"Needs Improvement"** shall mean that:

6.2.3.1 ~~The teacher has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or The teacher has earned "Effective" or "Highly Effective" ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component, or~~

6.2.3.2 ~~The teacher has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the teacher has earned an Unsatisfactory rating in the Student Improvement Component. The teacher has earned "Effective" or "Highly Effective" ratings in three (3) or four (4) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component, or~~

6.2.3.3 The teacher has earned three (3) "Effective" or "Highly Effective" and one (1) "Ineffective" rating on the first four Appraisal Components, and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.

6.2.4 **"Ineffective"** shall mean that:

6.2.4.1 ~~The teacher has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and The teacher has earned "Effective" or "Highly Effective" ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component, or~~

6.2.4.2 ~~The teacher earned an Unsatisfactory Component Rating in the Student Improvement Component. The teacher has earned "Effective" or "Highly Effective" ratings in zero (0) of the first four (4) Appraisal Components and "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or~~

6.2.4.3 The teacher has earned "Ineffective" ratings in three (3) or four (4) of the first four (4) Appraisal Components.

PROPOSED REGULATIONS

6.2.5 If a teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the teacher's rating shall be re-categorized as "Ineffective."

7.0 Pattern of Ineffective Teaching Defined

- 7.1 A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of ~~Unsatisfactory~~ "Needs Improvement" or "Ineffective" on any Appraisal Component in 5.0 on the Summative Evaluation regardless of the overall rating.
- 8.2 An Improvement Plan may be developed if a teacher's overall performance during an observed lesson is unsatisfactory. In instances where an improvement plan is to be developed, the Evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is ~~Unsatisfactory~~ Requires an Improvement Plan" and initialing the statement.

(Break in Continuity Within Section)

9.0 Challenge Process

- 9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "~~PERFORMANCE IS UNSATISFACTORY~~ Performance Requires An Improvement Plan" has been included on the required form(s). To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the Evaluator unless the supervisor of the Evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level Evaluator.

(Break in Continuity of Sections)

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 107A

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. For ease of reading, the regulation has been provided in its entirety.

The revisions include, but are not limited to, the vertical articulation and symmetry of language across the majority of Appraisal Criteria, Component, and Summative ratings areas, an increase in the weight of the observational Components and a decrease in the weight of the Student Improvement Component in certain summative scenarios, and an overall shift to Annual Appraisal Cycles for all specialists. This regulation is therefore being amended to ensure continuity of language in the Appraisal Criteria, Component and Summative ratings section and to identify the shift to Annual Appraisal Cycles for all teachers (to begin in the 2016-2017 school year), and to address revisions that arise as a result. The proposed revisions respond to stakeholder feedback by further streamlining the evaluation system, giving administrators greater ability to differentiate support, and promoting a greater emphasis on the annual processes of observation, feedback, and professional growth.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 5, 2015** to Tina Shockley, Policy Advisor, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment will provide ongoing opportunities for specialist development and student achievement by strengthening and refining the specialist appraisal cycle.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improved specialist appraisal and support across the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the level of authority and flexibility at the local board and school level for the 2015-2016 school year.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendment requires annual appraisals for all specialists to begin in 2016-2017, to effectuate continuous improvement and opportunities for ongoing, individualized coaching and professional development for all educators. New administrative requirements, as proposed, are offset by adjustments to the required number of observations and advent of state-approved online platform systems over the past two years that have been cited as reducing administrative burden in this area. Only

Novice specialists and specialists with recent track records of Unsatisfactory performance are currently entitled to Summative Evaluations annually.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments provide further consistency in key areas of the implementation of the teacher appraisal system.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expectation that there will be additional costs to the State or local school boards. Training and materials will likely continue to be developed and refined by state and local leaders on an annual basis.

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

1.0 Effective Date

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the ~~2014-15~~ 2015-2016 school year, unless another specialist appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.

2.0 Definitions

The following definitions shall be applied for purposes of this regulation:

“**Announced Observation**” ~~shall consist of~~ means the observation form and conference with the Credentialed Observer, an observation by the Credentialed Observer at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“**Board**” ~~shall~~ means a local board of education or a charter school board of directors.

“**Credentialed Observer**” ~~shall~~ means an individual, not always the supervisor of the specialist, who has successfully completed DPAS II credentialing in accordance with 10.0. Credentialed Observer denotes any individual who may conduct observations as part of a specialist’s appraisal process. The term Credentialed Observer encompasses those administrators who are Evaluators.

“**DASA**” ~~shall~~ means the Delaware Association of School Administrators.

“**Department**” ~~shall~~ means the Delaware Department of Education.

“**DPAS II Revised Guide for Specialists**” ~~shall~~ means the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

“**DSEA**” ~~shall~~ means the Delaware State Education Association.

“**Evaluator**” ~~shall~~ means a Credentialed Observer who is responsible for a specialist’s Summative Evaluation. A specialist’s required observations as part of the appraisal cycle shall generally be conducted by the assigned Evaluator; however, the assigned Evaluator may designate a school administrator who is also a Credentialed Observer to conduct the required observations.

“**Experienced Specialist**” ~~shall~~ means a specialist who holds a valid and current Continuing or Advanced License, issued pursuant to Chapter 12 of Title 14 of the *Delaware Code*; or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be means the plan that a specialist and Evaluator mutually develop in accordance with 8.0.

“Interim assessment” shall means an assessment given at regular and specified intervals throughout the school year, and designed to evaluate students’ knowledge and skills relative to a specific set of academic standards, and the results of which can be aggregated (e.g., by course, grade level, school, or school district) in order to inform teachers, administrators, and specialists at the student, classroom, school, and district levels.

“Novice Specialist” shall means a specialist who holds a valid and current Initial License issued pursuant to Chapter 12 of Title 14 of the *Delaware Code* or holds a valid and current license from his or her respective licensure body.

~~**“Satisfactory Component Rating”** shall mean the specialist’s performance demonstrates an understanding of the concepts of the component under Chapter 12 of Title 14 of the *Delaware Code*.~~

“Satisfactory Evaluation” shall be equivalent to the overall Highly Effective or Effective rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“Specialist” shall means an educator other than a teacher or administrator and includes, but is not limited to, School Counselors, Library Media Specialists, School Psychologists, and School Nurses.

“Student Achievement” shall means:

- (a) For tested grades and subjects:
 - (1) Student scores on the state assessment system; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.
- (b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessment; and other measures of student achievement that are rigorous and comparable across classrooms. Such alternative measures shall be approved by the Department of Education and developed in partnership with input from the relevant specialist organizations or respective licensure body and the Delaware State Education Association (DSEA).
- (c) For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any specialist’s 2014-15 performance appraisal. This may be extended by the Department for the 2015-16 school year.

“Student Growth” shall means the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

“Summative Evaluation” shall means the comprehensive, end-of-cycle appraisal and shall incorporate the results of the minimum required observations and required component-level data. At the discretion of the Evaluator, it may also include additional Announced or Unannounced observation data, beyond the required observation data, provided by other Credentialed Observers.

“Unannounced Observation” shall ~~consist of~~ means an observation by a Credentialed Observer at a date and time that has not been previously arranged using the associated formative conferences and reports, and which may include the use of the observation form. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

~~**“Unsatisfactory Component Rating”** shall mean the specialist’s performance does not demonstrate an understanding of the concepts of the component.~~

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Needs Improvement” or Ineffective rating on the Summative Evaluation as it pertains to educators seeking a continuing license.

“Working Day” shall means a day when the employee would normally be working in that district or charter school.

PROPOSED REGULATIONS

3.0 Appraisal Cycles

(Break in Continuity Within Section)

- 3.5 Beginning in the 2016-2017 school year, all Specialists shall receive an Annual Appraisal subject to the following conditions:
- 3.5.1 Experienced Specialists who have earned a rating of "Highly Effective" or "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced or Unannounced Observation with a Summative Evaluation each year.
- 3.5.2 Experienced Specialists who have received a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.
- 3.5.3 Novice Specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation each year.

(Break in Continuity of Sections)

6.0 Summative Evaluation Ratings

- 6.1 ~~Each Appraisal Component shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation. Each of the first four (4) Appraisal Components shall be assigned a rating of "Highly Effective," "Effective," "Needs Improvement" or "Ineffective" on the Summative Evaluation. The rating for the Student Improvement Component shall be assigned a rating of "Exceeds," "Satisfactory" or "Unsatisfactory" on the Summative Evaluation. The rating for each of the five (5) Appraisal Components shall reflect the standards as described in the DPAS II Revised Guides for Specialists.~~
- 6.1.1 ~~A satisfactory "Highly Effective" or "Effective" rating for each of the first four Appraisal Components shall mean the specialist has no more than one unacceptable rating on the Appraisal Criteria specified in each of the components. Appraisal Criteria observed shall be rated on each observation conducted and Appraisal Criteria also shall be assigned an overall rating in a specialist's Summative Evaluation.~~
- 6.1.2 ~~A satisfactory rating for the Student Improvement Component shall mean that the specialist demonstrates acceptable performance by meeting the standards set by the Secretary pursuant to 5.1.5.1.~~
- 6.2 ~~The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".~~
- 6.2.1 ~~Highly Effective shall mean that the specialist has earned a Satisfactory Component Rating in at least four (4) of the five (5) Appraisal Components in accordance with 5.0, including an Exceeds rating in the Student Improvement Component meaning that the students collectively demonstrate high rates of student growth, as defined in the DPAS II Revised Guide for Specialists, as the same may be amended from time to time, developed pursuant to 4.0 of this regulation. "Highly Effective" shall mean that the specialist has earned an "Effective" or "Highly Effective" rating in the first four (4) Appraisal Components and an Exceeds rating in the Student Improvement Component.~~
- 6.2.2 ~~Effective shall mean that: "Effective" shall mean that the specialist has earned an "Effective" or "Highly Effective" rating in at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.~~
- 6.2.2.1 ~~The specialist has earned a Satisfactory Component Rating in at least three (3) Appraisal Components, including a Satisfactory rating in the Student Improvement Component, and "Effective" may also mean, in accordance with procedures outlined in the DPAS II Guide for Specialists, that the specialist has earned a "Highly Effective" rating in two of the first (four) Appraisal Components with zero (0) "Ineffective" ratings and an "Unsatisfactory" rating in the Student Improvement Component.~~
- 6.2.2.2 ~~The specialist does not meet the requirements for a Highly Effective rating found in 6.2.1.~~
- 6.2.3 ~~"Needs Improvement" shall mean that:~~

- 6.2.3.1 ~~The specialist has earned one (1) or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, including a Satisfactory rating in the Student Improvement Component, or~~ The specialist has earned "Effective" or "Highly Effective" ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) "Ineffective" ratings and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component, or
- 6.2.3.2 ~~The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component. The specialist has earned~~ "Effective" or "Highly Effective" ratings in three (3) or four (4) of the first four (4) Appraisal Components and an Unsatisfactory rating in the Student Improvement Component, or
- 6.2.3.3 ~~The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component. The specialist has earned~~ three "Effective" or "Highly Effective" ratings and one (1) "Ineffective" rating on the first four Appraisal Components and a "Satisfactory" or "Exceeds" rating in the Student Improvement Component.
- 6.2.4 "Ineffective" shall mean that:
 - 6.2.4.1 ~~The specialist has earned zero (0), one (1), or two (2) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and~~ The specialist has earned "Effective" or "Highly Effective" ratings in zero (0), one (1), or two (2) of the first four (4) Appraisal Components and an "Unsatisfactory" rating in the Student Improvement Component, or
 - 6.2.4.2 ~~The specialist has earned an Unsatisfactory Component Rating in the School Improvement Component. The specialist has earned~~ "Effective" or "Highly Effective" ratings in zero (0) of the first four (4) Appraisal Components and "Satisfactory" or "Exceeds" rating in the Student Improvement Component; or
 - 6.2.4.3 ~~The specialist has earned three (3) or four (4) Satisfactory Component Ratings out of the five (5) Appraisal Components in accordance with 5.0, and the specialist has earned an Unsatisfactory rating in the Student Improvement Component. The specialist has earned~~ Ineffective ratings in three (3) or four (4) of the first four (4) Appraisal Components.
- 6.2.5 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

Year 1	Year 2	Year 3
Ineffective	Ineffective	
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

- 8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of ~~Unsatisfactory~~ "Needs Improvement" or "Ineffective" on any component in 5.0 on the Summative Evaluation regardless of the overall rating.

PROPOSED REGULATIONS

- 8.2 An Improvement Plan may be developed if a specialist's overall performance during an observation is unsatisfactory. In instances where an improvement plan is to be developed, the evaluator shall first have noted the unsatisfactory performance on the required forms by noting "Performance is ~~Unsatisfactory~~ Requires an Improvement Plan" and initialing the statement.

(Break in Continuity Within Section)

9.0 Challenge Process

- 9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement ~~PERFORMANCE IS UNSATISFACTORY~~ "Performance Requires An Improvement Plan" has been included on the required form(s). To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the Evaluator unless the supervisor of the Evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level Evaluator.

(Break in Continuity Within Section)

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

107A Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 108A

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The amendments include, but are not limited to clarifying the possible combination of summative ratings for "Needs Improvement", clarifying the processes to earn one's credential to evaluate various administrators utilizing DPAS-II, and issuing the proposed amended regulation to be in effect beginning with the 2015-16 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 5, 2015** to Tina Shockley, Policy Advisor, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the Department or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments will help improve student achievement as measured against the state standards by requiring evaluators to demonstrate a proficient level of knowledge and skill to implement the administrator evaluation system.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments do not specifically address an equitable education for students; however, there is an expectation that the amendments will help provide for improving administrator evaluation and support across the state.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments do not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments do not specifically address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the current authority and flexibility of decision-making at the local board and school level, while denoting the state's role in issuing an evaluation system credential.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendment provides support and training to local administrators as well as the opportunity to demonstrate proficient knowledge and skills to implement the administrator evaluation system and are not intended to place unnecessary reporting or administrative requirements on these decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments do not change the entity with authority or accountability.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are complimentary to and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendment is intended to clarify the current regulation without additional burden.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not an expectation that there are additional costs to the local school boards. Additional training and materials should be developed by the state in order to best serve our educators and administrators.

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**1.0 Effective Date**

- 1.1 This regulation shall be effective for all school districts and charter schools beginning with the ~~2014-15~~ 2015-16 school year, unless another administrator appraisal system has been approved by the Department pursuant to Chapter 12 of Title 14 of the Delaware Code.
- 1.2 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

The following definitions shall apply for purposes of this regulation:

"Annual Appraisal Cycle" means the administrator appraisal process that occurs ~~within one school~~ each year.

"Board" ~~shall~~ means the local board of education or charter school board of directors.

"Credentialed Evaluator" ~~shall~~ means the individual, usually the supervisor of the administrator, who has successfully completed the ~~evaluation~~ foundational DPAS II training and credentialing assessment in accordance with 10.0. A superintendent or head of charter school shall be evaluated by member(s) of the Board who shall also have successfully completed the ~~evaluation~~ DPAS II foundational training

PROPOSED REGULATIONS

and credentialing assessment in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"Department" shall mean the Delaware Department of Education.

"DPAS II Revised Guides for Administrators" shall mean the manuals that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process. The Department shall create up to four (4) manuals differentiated by administrator role. The DPAS II Revised Guides for Administrators may also be referred to collectively as "Guides" or individually as "Guide."

"DSBA" shall mean the Delaware School Boards Association.

"Goal-Setting Conference" shall mean a meeting that occurs between the administrator and the Credentialed Evaluator at the beginning of the Annual Appraisal Cycle, which typically is in the summer or fall. The meeting shall include but not be limited to establishing goals for the year and discussing areas of support, as described in the DPAS II Revised Guides for Administrators.

"Improvement Plan" shall be means the plan that an administrator and evaluator mutually develop in accordance with 8.0.

"Mid-Year Conference" shall mean a meeting that occurs between the administrator and the Credentialed Evaluator as part of the Annual Appraisal Cycle, which typically occurs midway through the school year. The meeting shall include but not be limited to discussion of progress toward goals and areas of support, as described in the DPAS II Revised Guides for Administrators.

"Satisfactory Evaluation" shall be equivalent to the overall "Highly Effective" or "Effective" rating on the Summative Evaluation.

"Student Achievement" shall mean:

- (a) For tested grades and subjects:
 - (1) Student scores on the state assessment system; and, as appropriate,
 - (2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA).

- (c) For the 2014-15 school year only, student scores on the Smarter English Language Arts and Smarter Mathematics statewide assessments shall not be incorporated into any administrator's 2014-15 performance appraisal. This may be extended by the Department for the 2015-2016 school year.

"Student Growth" shall mean the change in Student Achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"Summative Evaluation" shall be means the final evaluation at the conclusion of the Annual Appraisal Cycle.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Needs Improvement" or "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

(Break in Continuity of Sections)

6.0 Summative Evaluation Ratings

(Break in Continuity Within Section)

- 6.2 The Summative Evaluation shall also include one of four overall ratings: "Highly Effective", "Effective", "Needs Improvement" or "Ineffective".
- 6.2.1 **"Highly Effective"** shall mean that the administrator has earned an Effective or Highly Effective rating in the first four (4) Appraisal Components and an Exceeds rating in the Student Improvement Component.
- 6.2.2 **"Effective"** shall mean that the administrator has earned an Effective or Highly Effective rating in at least three (3) of the first four (4) Appraisal Components with zero (0) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component.
- 6.2.3 **"Needs Improvement"** shall mean that:
- 6.2.3.1 The administrator has earned Effective or Highly Effective ratings in one (1) or two (2) of the first four (4) Appraisal Components with zero (0), one (1) or two (2) Ineffective ratings and a Satisfactory or Exceeds rating in the Student Improvement Component, or
- 6.2.3.2 The administrator has earned Effective or Highly Effective ratings in three (3) or four (4) of the first four (4) Appraisal Components and an Unsatisfactory rating in the Student Improvement Component.
- 6.2.3.3 The administrator has earned three (3) Effective or Highly Effective and one (1) Ineffective rating on the first four Appraisal Components and a Satisfactory or Exceeds rating in the Student Improvement Component.
- 6.2.4 **"Ineffective"** shall mean that:
- (Break in Continuity of Sections)*

10.0 Evaluator(s) Credentials

- 10.1 ~~Evaluators shall have successfully completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education. Credentialing processes and assessments shall be established and conducted by the Department of Education, and developed in collaboration with school and district level administrators.~~
- ~~10.1.1 The Department of Education shall annually monitor implementation of DPAS II for Administrators.~~
- 10.2 The training shall occur no less than once every three (3) years and shall include techniques for observation and conferencing, content and relationships of the state standards for administrators, and a thorough review of the DPAS II Revised Guides for Administrators. Activities in which participants practice implementation of DPAS II procedures shall be included in the training. Evaluator credentials for the utilization of each of the DPAS II Revised Guides are earned upon successful completion of the credentialing assessment for the appropriate Guide. Evaluator credentials are valid for five years from the date of issue. Evaluators may seek to renew their credentials within 24 months prior to the expiration date. Credentialing assessment(s) for all Guides shall be established and implemented no later than August 1, 2017.
- 10.2.1 Completion of a foundational DPAS II training for the appropriate Guide(s) shall allow evaluators to conduct administrator evaluations until the credentialing assessment is established and implemented for the applicable DPAS II Revised Guide for Administrators.
- 10.2.2 Upon the initial implementation of the credentialing assessment, the Department shall establish a time period during which the assessment will be offered at least three (3) times in order to provide multiple opportunities for an individual to earn the credential. Once available, an administrator shall have the opportunity to take the assessment for each applicable Guide three times. Administrators shall earn their credential during one of those opportunities before continuing their work. If an administrator does not earn a credential, they will not be permitted to conduct administrator evaluations in the applicable Guide(s), but, in order to earn their credential, shall have the opportunity to take the assessment again during the next time period that such a credentialing assessment is offered.

PROPOSED REGULATIONS

10.2.3 Thereafter, the Department shall establish a schedule during which each administrator shall have no less than three opportunities to renew their credential, for each applicable Guide, prior to its expiration.

~~40.3 The credentialing process shall be conducted by the Department of Education.~~

11.0 Evaluator Training

11.1 Training opportunities shall be offered annually and shall include techniques for observation and conferencing and a review of the DPAS II Revised Guides for Administrators. Activities in which participants practice implementation of DPAS II procedures may be included.

11.2 Evaluators shall complete a DPAS II training for the appropriate Guide(s) as developed by the Department of Education upon notice from the Department subsequent to substantive changes to an applicable DPAS-II Revised Guides for Administrators.

12.0 DPAS II for Administrator Monitoring

The Department of Education shall annually monitor implementation of DPAS II for Administrators.

4413.0 Evaluation of Process

The Department of Education shall conduct an annual evaluation of the administrator appraisal process. The evaluation shall, at a minimum, include a survey of administrators and interviews with a sampling of administrators. Data from the evaluation and proposed changes to DPAS II Revised shall be presented to the State Board of Education for review on an annual basis.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 804

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

804 Immunizations

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 804 Immunizations. This regulation is being amended to be in alignment with recommendations made by the Delaware Division of Public Health related to immunizations for students.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 5, 2015** to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the health and safety needs of the school community.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is intended to continue to ensure all students receive an equitable education by decreasing the risk of communicable disease in the school community.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment will address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the amendment.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendment is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this amended regulation.

804 Immunizations

1.0 Definitions

"Entering Grade 9 Students" means any child entering Grade 9 or an equivalent school or program for this age.

"School Enterer" means any child between birth and twenty (20) years inclusive entering or being admitted to a Delaware public school district or public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

2.0 Minimum Immunizations Required for All School Enterers

- 2.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:
 - 2.1.1 Four or more doses of diphtheria, tetanus, pertussis (~~DTaP, DTP, or other approved vaccine~~) or a an approved combination of these vaccines (DTaP, DTP, DT, or other). ~~A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later.~~ Notwithstanding this requirement:
 - 2.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;
 - 2.1.1.2 A child, who received the first dose of ~~Td (adult)~~ diphtheria and tetanus containing vaccine as adult Td vaccine at or after age seven, may meet this requirement with only three doses of Td or approved formulation, e.g., Tdap (adult).

PROPOSED REGULATIONS

- 2.1.2 Three or more doses of inactivated polio virus vaccine (IPV), oral polio vaccine (OPV), or a combination of these vaccines. Notwithstanding this requirement:
- 2.1.2.1 A child who received a third dose prior to his or her fourth birthday shall have a fourth dose.
- 2.1.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.
- 2.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.
- 2.1.4 Three doses of Hepatitis B vaccine.
- 2.1.4.1 For children 11 to 15 years old age, two doses of a vaccine approved by the Center for Disease Control (CDC) may be used.
- 2.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.
- 2.1.5 ~~Two doses of Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the 2008-2009 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination.~~
- 2.1.5.1 The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school.
- 2.1.5.2 A written disease history, provided by the health care provider, will be accepted in lieu of the Varicella vaccination.
- 2.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

3.0 Minimum Immunizations for Entering Grade 9 Students

- 3.1 Beginning in school year 2016-2017, in addition to those in Section 2.0, proof of the below identified immunizations shall be provided by Entering Grade 9 Students. These immunizations are strongly recommended, but not required, for Entering Grade 9 Students in school year 2015-2016:
- 3.1.1 An adolescent booster dose of DTaP or DTP administered at age 11 or five years after the last DTaP, DTP, or DT dose, whichever is later.
- 3.1.2 One dose of meningococcal vaccine.
- 3.2 Schools will coordinate with the Division of Public Health to provide services to non-compliant Entering Grade 9 Students.

(Non-regulatory guidance: Please refer to 14 **DE Admin. Code** 815 Health Examinations and Screenings for health examinations required for entering grade 9 students.)

3.04.0 Certification of Immunization

- 3.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall present a certificate specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.

- ~~34.2~~ According to 14 **Del.C.** §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.
- ~~34.3~~ A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:
- ~~34.3.1~~ One dose of DTaP, or DTP, or DT; and
 - ~~34.3.2~~ One dose of IPV or OPV; and
 - ~~34.3.3~~ One dose of measles, mumps and rubella (MMR) vaccine; and
 - ~~34.3.4~~ The first dose of the Hepatitis B series; and
 - ~~34.3.5~~ One dose of Varicella vaccine ~~as per 2.5.~~
 - ~~4.3.6~~ One dose of meningococcal vaccine.
- ~~34.4~~ ~~14 DE Admin. Code 901 Education of Homeless Children and Youth 6.0~~ states that "School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall ~~as stated in 14 DE Admin. Code~~ "assist homeless children and youth in meeting the immunization requirements".
- ~~34.5~~ Title In accordance with the provisions of 14 Del.C., Ch. 1, Subchapter III-A Interstate Compact on Education For Children of Military Families (MIC3) and its enabling regulation, provides that a School Enterer or Entering Grade 9 Student who is subject to MIC3 shall be allowed thirty (30) calendar days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, to obtain or to initiate the basic a series of immunizations required by this regulation.
- ~~34.6~~ If the School Enterer or Entering Grade 9 Student fails to complete the series of required immunizations, the parent, legal guardian, Relative Caregiver or ~~a school enterer student~~ who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified that the School Enterer or Entering Grade 9 Student will be excluded according to 14 **Del.C.** §131.

4-05.0 Lost or Destroyed Immunization Record

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver or a school enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in ~~3.3~~ 4.3. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

5-06.0 Exemption from Immunization

- ~~56.1~~ Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 which permits approved medical and notarized religious exemptions.
- ~~6.1.1~~ Medical exemptions are reviewed and approved by the Delaware Division of Public Health.
- ~~56.2~~ Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

6-07.0 Verification of School Records

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

7-08.0 Documentation

- ~~78.1~~ School nurses shall record and maintain documentation of each student's immunization status.

78.2 Each student's immunization record shall be included in the Delaware Immunization Registry.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

902 Gifted or Talented Education Plan

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to add 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. This regulation is being created pursuant to 14 **Del.C.** §3126, which states that the extent of programs and facilities provided for children determined to be gifted or talented shall be in accordance with the rules and regulations of the Department. This regulation develops the rules and regulations relative to standards for identifying gifted or talented students, and the development, implementation and monitoring of programs for gifted or talented children. It is being republished because of feedback received related to the timing of the development and implementation of plans and whether charter schools should be subject to this requirement. The regulation has been updated to provide more time for school districts to develop and implement plans and to eliminate this requirement by regulation for charter schools. Additionally, the regulation has been revised to change the order of some of the subsections so that information about the same subject or component is grouped together. Finally, the regulation has been revised to clarify the process of identification of a gifted or talented student.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **June 5, 2015** to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed or obtained at the Department of Education, Finance Office located at the address listed above.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is intended to improve gifted or talented students' achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation is intended to continue to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation continues to ensure that all student's legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation does not change the decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be a cost to school districts and charter schools for specialized training for teachers to teach specific for gifted or talented students, but schools may also utilize existing staff if qualified to teach gifted or talented students.

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by professionally qualified person(s), may require differentiated educational program(s) or service(s) beyond those normally provided by the regular school program in order to address the individual's capabilities.

2.0 Definitions

"**Gifted or Talented Education Plan (Plan)**" means a document developed by a school district for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

"**Gifted or Talented Student**" means a student in the chronological age group four (4) through the end of the school year in which the child attains the age of 21 or until receipt of a regular high school diploma, whichever occurs first, who has been identified by a professionally qualified person(s) as meeting the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination:

General intellectual ability;

Specific academic aptitude;

Creative or productive thinking;

Leadership ability;

Visual and performing arts ability; or

Psychomotor ability.

"**Relative Caregiver**" means, pursuant to 14 Del.C. §202 (f)(1), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

3.0 Development and Components of the Plan

3.1 Each school district shall have a Plan for educational services for identified gifted or talented students. The Plan, at a minimum, shall:

3.1.1 Outline goals and specific outcomes;

3.1.2 Be developed with input from various stakeholder groups including parents;

3.1.3 Provide the process for identification of gifted or talented students by professionally qualified persons;

PROPOSED REGULATIONS

- 3.1.4 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
- 3.1.5 Provide for a communication process, which shall include procedures to inform parent(s), guardian(s), or Relative Caregiver(s) of a student's participation in the gifted or talented education program;
- 3.1.6 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
- 3.1.7 Establish procedures for consideration of the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred; and
- 3.1.8 Provide for an evaluation of the Plan provided for its gifted or talented students.
- 3.2 The Plan should be provided to the Department of Education by July 1, 2016 for implementation no later than August 1, 2017 and each year thereafter.

4.0 Department of Education Responsibilities

- 4.1 The Department of Education shall maintain a resource guide of best practices, on its website, that a school district may use in the development and implementation of its Plan.
- 4.2 Each Plan shall be reviewed periodically by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)* for pharmaceutical products specifically, *to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2015.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the

Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA) for pharmaceutical products specifically, to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the Affordable Care Act. Specifically, Section 2501, *Prescription Drug Rebates*
- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 CFR §440.120, *Prescribed drugs*
- 42 CFR §447.201, *State plan requirements*
- 42 CFR §447.205, *Public notice of changes in Statewide methods and standards for setting payment rates*

Background*Medicaid Supplemental Drug Rebate Agreements*

The federal Omnibus Budget Reconciliation Act of 1990, section 4401 added §1927 to the Social Security Act. Section 1927 provides that States may enter separate or supplemental drug rebate agreements as long as such agreements achieve drug rebates equal to or greater than the drug rebates set forth in the Secretary's national rebate agreement with drug manufacturers, which is published at 56 F.R. 7049 (1991). Specifically, the drug rebate statute, at section 1927(a)(1) of the Social Security Act (Act), provides that "the Secretary may authorize a State to enter directly into agreements with a manufacturer." Also, section 1927(a)(4) of the Act provides that any drug rebate agreement between a State and drug manufacturers and in effect on November 5, 1990, may constitute a rebate agreement in compliance with the statute if the Centers for Medicare and Medicaid Services (CMS) determines that any such agreement "provides for rebates that are at least as large as the rebates otherwise required under this section." CMS accordingly believes that Congress intended that States that seek CMS approval under section 1927(a)(1) to enter directly into agreements with manufacturers must ensure that any such agreement will achieve drug rebates that are at least equal to the rebates set forth in the Secretary's rebate agreements with manufacturers.

Currently, prescription drug manufacturers are required to enter into a rebate agreement. The agreement requires manufacturers to provide state Medicaid programs with rebates for the drugs purchased for recipients on an outpatient basis. *Section 2501* of the Patient Protection and Affordable Care Act (ACA) makes two modifications to the prescription drug rebate program. The first modification, which took effect on January 1, 2010, increases the minimum rebate amount but requires the State to remit 100 percent of the additional rebates collected to the federal government. The second modification, which took effect on March 23, 2010, extends the application of the prescription drug rebates program to prescription drugs that are provided to Medicaid recipients who are enrolled in Medicaid Managed Care Organizations (MCOs).

Summary of Proposal

Among the services provided to recipients of services under the Delaware Medical Assistance Program (DMAP) are prescription drugs and related pharmacy services. Expenditures for pharmacy services are offset in part by rebate agreements with suppliers of prescription drugs. Part of the system by which Delaware receives these rebates is a multi-state purchasing pool supplemental rebate agreement.

The existing multi-state supplemental rebate agreement (SRA) between the State of Delaware and pharmaceutical manufacturers for legend drugs provided fee-for-service to Medicaid individuals was approved by CMS on February 20, 2014 with an effective date of October 1, 2013. Delaware participates in the TOP\$ program, the multistate Medicaid pharmaceutical purchasing pool administered by Provider Synergies, LLC, an affiliate of Magellan Medicaid Administration. This agreement was revised by adding definitions and structural changes to the SRA including the option of including Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates. Upon approval of this agreement, CMS advised that a separate state plan amendment

(SPA) will be required if the state intends to exercise the option of including MCO utilization for supplemental rebates.

DHSS/DMMA intends to exercise this option and submit to CMS for review and approval a SPA to include MCO utilization for supplemental rebate collection.

Public Notice

Under the provisions of 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205 and Title 29, Chapter 101 of the Delaware Code, DHSS/DMMA gives notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity for public input regarding any significant proposed change in its method and standards for setting payment rates for Medicaid services. Comments must be received by 4:30 p.m. on May 31, 2015.

The provisions of this state plan amendment relating to the methodology and payment rates for prescription drugs and related pharmacy services are subject to approval by CMS. The draft SPA page(s) may undergo further revisions before and after submittal to CMS based upon public comment and/or CMS feedback. The final version may be subject to significant change.

Also, upon CMS approval, the applicable Delaware Medical Assistance Program (DMAP) Provider Policy Specific Manuals will be updated. Manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the DMAP program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates.

Fiscal Impact Statement

The following fiscal impact is projected:

	FFY2015	FFY2016	FFY2017
Federal Supplemental	\$ (4,860,453)	\$ (10,012,534)	\$ (10,212,785)
Federal Share	\$ (2,606,661)	\$ (5,489,872)	\$ (5,599,670)
State Share	\$ (2,253,792)	\$ (4,522,662)	\$ (4,613,115)

DMMA PROPOSED REGULATION #15-08

REVISION:

Attachment 3.1-A
Page 5 Addendum
Continued 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

LIMITATIONS

12.a. Prescribed Drugs Continued:

Drug Rebate Agreements

- A supplemental rebate agreement submitted to CMS on December 10, 2013 amended the December 20, 2005 version of the "State of Delaware TOP\$SM The Optimal PDL \$solution ("TOP\$") State Supplemental Rebate Agreement" authorized under Transmittal Number SP-412, has been authorized by CMS.
 - Pharmaceutical manufacturers are allowed to audit utilization rates;

-
- Compliance with the reporting requirements for state utilization information and restrictions to coverage;
 - The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
 - Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are authorized by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary for Health and Human Services. The state will remit the federal portion of any state supplemental rebates collected.
 - Participation in the TOP\$ multi-state rebate program will not limit the state's ability to submit a SPA to authorize the implementation of a state-specific supplemental rebate agreement.
 - Supplemental rebate agreements would apply to the drug benefit, both fee-for-service and those paid by contracted managed care organizations (MCOs).
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DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 7903 (16 Del.C. §7903)
16 DE Admin. Code 4455

PUBLIC NOTICE

4455 Delaware Regulations Governing a Detailed Plumbing Code

The Office of Engineering, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to adopt the 2015 Delaware Plumbing Code. The purpose of the amendments is to update the requirements so that they are in concert with current plumbing standard. Due to the extensive number of amendments the current regulations will be repealed and replaced in their entirety with the proposed regulations being published. On May 1, 2015, the Division plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

A public hearing will be held on Friday, May 29, 2015 at 3:00 p.m. in the Conference Room, located in the Office of Engineering at the Edgehill Shopping Center 43 South DuPont Hwy, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2015 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Engineering at (302) 741-8640.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Doug Lodge P.E., the Division of Public Health by Friday, June 5, 2015 at:

Doug Lodge P.E.
Division of Public Health
Office of Engineering
43 South DuPont Hwy
Dover, DE 19901
Email: doug.lodge@state.de.us
Phone: (302) 741-8640

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

4455 Delaware Regulations Governing a Detailed Plumbing Code

PROPOSED REGULATIONS

DIVISION OF PUBLIC HEALTH

AUTHORITY ON RADIATION PROTECTION

Statutory Authority: 16 Delaware Code, §7405 (16 Del.C. § 7405)
16 DE Admin. Code 4465

PUBLIC NOTICE

**Delaware Radiation Control Regulations:
4465 Part D Standards for Protection Against Radiation
4465 Part J Notices, Instructions and Reports to Workers, Inspections**

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to two sets of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current state administrative code and federal requirements. On May 1, 2015, the ARP plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Radiation Control Regulations. Due to the extensive number of amendments the ARP has concluded that these two sets of current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

DE Admin Code No.	Current Delaware Citation	Title
4465	Part D	Standards for Protection Against Radiation
4465	Part J	Notices, Instructions and Reports to Workers; Inspections

The public hearing will be held on Wednesday, May 27, 2015 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2015 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Radiation Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Frieda Fisher-Tyler by Monday, June 8, 2015 at:

Frieda Fisher-Tyler
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Frieda.Fisher-Tyler@state.de.us
Phone: (302) 744-4546

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

Delaware Radiation Control Regulations

DEPARTMENT OF LABOR DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3302(17) (19 Del.C. §3302(17))
19 DE Admin. Code 1202

PUBLIC NOTICE

1202 Unemployment Insurance Regulations

The Delaware Department of Labor, Division of Unemployment Insurance proposes this regulation in accordance with Section 3302(17) of Title 19 of the **Delaware Code** to establish procedures for submitting and processing claims for partial unemployment insurance.

The Delaware Department of Labor, Division of Unemployment Insurance solicits written comments from the public concerning the proposed regulation. Any such comments should be submitted to the Director of the Division of Unemployment Insurance, Thomas H. Ellis, by mail to: Delaware Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809-0950, or by email to: Thomas.Ellis@state.de.us. Written comments must be received by Mr. Ellis on or before **June 1, 2015** to be considered prior to the adoption of the proposed regulation. Copies of the proposed regulation are available upon request.

1202 Unemployment Insurance Regulations (Break in Continuity of Sections)

22.0 Partial Unemployment Insurance

- 22.1 Definitions.** As used in this section, unless the context clearly requires otherwise:
- “Partially unemployed individual”** means a partially unemployed individual is an employee who, during any given week, is still employed by his or her employer but worked less than his or her regular full-time hours because of the lack of full-time work.
- “Week of partial unemployment”** means, with respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his or her pay period week. With respect to a partially unemployed individual whose wages are not paid on a weekly basis (e.g., bi-weekly, monthly) a week of partial unemployment shall be any consecutive seven day period the Division may prescribe as to any employee or group of employees as it deems appropriate.
- 22.2 Original Benefit Year Claim.** In order to file a claim for partial unemployment insurance, a partially unemployed individual must establish an original benefit year claim in person at one of the Division’s local offices or by using the Division’s on-line filing system.
- 22.3 Responsibility To File Low Earnings Report (Form UC-114).** After the end of any week in which an employer has furnished any of its employees with less than regular full-time work (or the earnings equivalent thereto), on the customary payday for the pay period during which full-time work was unavailable the employer or the employee shall deliver a completed Low Earnings Report (Form UC-114) to the nearest Division local office signed by both the employer and the employee.
- 22.4 Division’s Responsibility on Receipt of Form UC-114.** Upon receiving a Form UC-114, the Division shall promptly process the information contained in it so that a timely payment of unemployment insurance may be made to the partially unemployed individual who has established an original benefit year claim. For any given week, if the earnings stated on a Form UC-114 exceed the earnings allowance for the partially unemployed individual based on his or her weekly benefit amount, the Division will mail a notice to the affected employee stating the reason why no partial unemployment insurance is owed for the week in question.
- 22.5 Time For Filing Claims for Partial Unemployment.** No claim for partial unemployment insurance benefits may be made more than 14 days after the week ending period reflected on the Form UC-114 being filed.

PROPOSED REGULATIONS

22.6 Employer Records in Connection with Partial Unemployment. In addition to the records required to be maintained by employers set forth in Section 4.0, each employer shall maintain for a period of four years payroll records containing the following information on each employee that was determined to be eligible to receive partial unemployment insurance:

22.6.1 the amount of wages earned by week;

22.6.2 the specific dates of weeks of less than full-time work by the employee; and

22.6.3 the number of hours of work lost by each employee, if any, due to the employee's unavailability for work.

***Please Note:** As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:

1202 Unemployment Insurance Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(1); 2804; 2806

(7 Del.C. §§1902(a)(1); 2804; 2806)

7 DE Admin. Code 3710, 3711 & 3712

REGISTER NOTICE #2015 - 02

3700 Shellfish

1. TITLE OF THE REGULATION:

3710 Conch

3711 Conch Minimum Size Limits

3712 Commercial Conch Dredge Licenses [Commercial Conch Season]

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The purpose of this action is to provide Delaware's licensed knobbed conch, *Busycon carica*, dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware's knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey's conch dredge landings are an authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum size limit with a five month season from November 15 through April 15 and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5-inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014), does not warrant additional licensing restrictions at this time.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§1902(a)(1), §2804, §2806

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code §§3710, 3711 and 3712 pertaining to knobbed conch will be open May 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 28, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3710 Conch

3711 Conch Minimum Size Limits

(Penalty Section 7 Del.C. §1912)

- 1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than ~~five 5 1/4 inches in 2007, 5 1/2 inches in 2008, 5 3/4 inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum length shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, 3 1/4 inches in 2008, 3 1/4 inches in 2009 and 3 1/2 inches in 2010 and shall remain 3 1/2 inches thereafter until changed by regulation~~ five (5) inches in length or less than three (3) inches in diameter at the whorl.
- 4.0 Notwithstanding the provisions of paragraph 3.0, a person may possess no more than five (5) knobbed conchs per 60 pounds that are less than the allowable minimum length limit or the minimum diameter at the whorl.

3712 Commercial Conch Dredge Licenses Season

(Penalty Section 7 Del.C. § 1912)

- 1.0 Pursuant to ~~§2803(c) of 7 Del.C.~~, the Department shall not issue any new conch dredge licenses for a period of 5 years to begin January 1, 2006. Licenses may continue to be issued pursuant to ~~§2803(d) of 7 Del.C.~~ Notwithstanding 7 Del.C. §§2803(a) and 2805, it is unlawful to for a vessel equipped with a dredge to possess knobbed conch during the period June 16 through January 14.

PROPOSED REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304 (24 Del.C. §1304)
24 DE Admin. Code 1300

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Rule 1.0 – Firearms Policy – clarifying the initial course of instruction, the re-qualifications and making provisions for armored car guards; Rule 6.0 – Criminal Offenses – gives the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes; Rule 9.0 – Qualified Manager/License Holder – clarifies what agencies the Delaware manager may work for and gives the minimum law enforcement experience requirement; Rule 11.0 – Personnel Rosters and Job Assignments – requires the private investigative agencies to submit rosters every three months as listed and requires everyone to submit a roster even if there are no employees working in Delaware. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by May 31, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly hearings Thursday, July 9, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

1300 Board of Examiners of Private Investigators & Private Security Agencies

1.0 Firearm's Policy

- 1.1 Rule 1.0 shall apply only to individuals licensed under 24 Del.C. Ch. 13, while such individuals are acting in the performance of their duties as an armed security guard or armored car guard.
- 1.12 No ~~person~~ individual licensed under 24 Del.C. §§1315 & 1317 Ch. 13 shall carry a firearm unless that ~~person~~ individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). The initial qualification course may be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 1.23 In order to carry a firearm, ~~individuals~~ individuals licensed to carry a firearm under 24 Del.C. Ch. 13 must shoot a minimum of three (3) qualifying shoots per calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot and may be combined with a day shoot. ~~Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shoot may be used to fulfill one day and one low light requirement during the first year. Two day shoots shall not be completed on the same date.~~
- 1.23.1 An individual not meeting the minimum qualifications set forth in 1.2 Rule 1.3 may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the calendar year.
- 1.34 Firearms—approved type of weapons Only the handguns with the following calibers are permitted:
- 1.34.1 9mm;
- 1.34.2 .357;
- 1.34.3 .38;

- 1.34.4 .40;
1.34.5 .45; or
1.4.6 .357 SIG.

- 1.45 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 1.56 Under no circumstances will anyone under this Rule be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 1.67 All individuals must ~~qualify~~ meet the minimum qualifications set forth in 1.3 with the same make/model/caliber of weapon that he/she will carry.
- 1.78 All ammunition ~~will~~ must be factory fresh (no re-loads).
- 1.89 The minimum passing score is 80%.
- 1.910 All licenses are valid for a period of five ~~(5)~~ years, armored car licenses are valid for a period of two years, subject to proof of compliance of Rule 1.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January ~~31st~~ 15th of each year for the previous calendar year.
- 1.4011 Firearms Instructors providing instruction under Rule 1.0:
- 1.4011.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), ~~and/or~~ another professional firearms training institution as a "certified firearms instructor".
- 1.4011.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified ~~shotgun~~ handgun instructor may only instruct and qualify individuals with the ~~shotgun~~ handgun.)
- 1.4011.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals ~~licensed under 24 Del.C. Ch. 13~~.

(Break in Continuity of Sections)

6.0 Criminal Offenses

- 6.1 In addition to those qualifications set forth in 24 **Del.C.** Ch. 13, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III within the last three (3) years.
- 6.2 For the purposes of 24 **Del.C.** Ch. 13, the Director of the Professional Licensing Section may deny an application, ~~for a license or~~ suspend, or revoke a license if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):
- 6.2.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:
- (Break in Continuity Within Section)***
- 6.2.1.14 §1105 ~~Endangering the Welfare of an Incompetent Person~~ Crime Against a Vulnerable Adult;
- (Break in Continuity Within Section)***
- 6.2.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities:
- 6.2.2.1 ~~§1166 Patient Neglect or Abuse~~ §1136 Violations.
- 6.2.3 Title 31 Welfare Ch. 39 Adult Protective Services:
- 6.2.3.1 ~~§3913 Abuse/Neglect/Exploitation/Mistreatment of an Infirm Adult~~ Violations.
- 6.3 Anyone applying for licensure under 24 **Del.C.** Ch. 13 shall not be issued a license if they have any pending criminal charge(s) for any crimes listed in this Chapter.
- 6.4 The Director of the Professional Licensing Section may suspend anyone licensed under 24 **Del.C.** Ch. 13 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

PROPOSED REGULATIONS

(Break in Continuity of Sections)

9.0 Qualified Delaware Manager/License Holder

- 9.1 A qualified Delaware manager ~~cannot~~ may not be employed by more than one ~~company~~ private security agency, private investigative agency, or armored car agency at the same time. For example; a person cannot serve as a qualified Delaware manager for two separate private security agencies, ~~and/or two separate~~ private investigative agencies, or two separate armored car agencies. They ~~may,~~ however, serve as a Delaware manager where there will be no conflict of interest. For example, a person can serve as the Delaware manager for a private security agency and an armored car agency, or can serve as the Delaware manager for a private security agency and a private investigative agency, or can serve as the Delaware manager for a private investigative agency and an armored car agency.
- 9.2 A qualified license holder must be an owner/partner/corporate officer of the agency requesting licensure.
- 9.3 Law enforcement qualification shall be at a minimum of three years' experience not to include the training academy attendance.

(Break in Continuity of Sections)

11.0 Personnel Rosters and Job Assignments

- 11.1 Anyone licensed as a private security agency (Class B or C) under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Professional Licensing Section by the tenth of every month. Anyone licensed as a private investigative agency (Class A) under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster to the Professional Licensing Section by the tenth of January, April, July and October. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60	W	M	01/25/99	FA
Helen E. White	03/17/71	B	F	03/17/00	FA
John F. Henry	05/23/43	B	M	05/23/00	PI
James D. Williams	12/03/40	W	M	06/30/99	MG
Frank G. Montgomery	07/24/55	B	M	06/30/99	LH
Anne L. Murray	10/20/40	W	F	06/30/99	CO

<u>Henry, John F.</u>	<u>05/23/43</u>	<u>B</u>	<u>M</u>	<u>05/23/00</u>	<u>PI</u>
<u>Montgomery, Frank G.</u>	<u>07/24/55</u>	<u>B</u>	<u>M</u>	<u>06/30/99</u>	<u>LH</u>
<u>Murray, Anne L.</u>	<u>10/20/40</u>	<u>W</u>	<u>F</u>	<u>06/30/99</u>	<u>CO</u>
<u>Smith, Mark A.</u>	<u>01/25/60</u>	<u>W</u>	<u>M</u>	<u>01/25/99</u>	<u>SG</u>
<u>White, Helen E.</u>	<u>03/17/71</u>	<u>B</u>	<u>F</u>	<u>03/17/00</u>	<u>FA</u>
<u>Williams, James D.</u>	<u>12/03/40</u>	<u>W</u>	<u>M</u>	<u>06/30/99</u>	<u>MG</u>

SG Security Guard
 FA Firearm's Guard
 PI Private Investigator
 MG Delaware Manager
 LH License Holder
 CO Corporate Officer

- 11.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry

Barley Mill Road

2200 - 0600 Hours, Monday, Wednesday, and Friday

- 11.3 Rosters shall be submitted as required in 11.1 regardless of the number of employees working in the State of Delaware, to include the licensed Delaware Manager.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1300 Board of Examiners of Private Investigators & Private Security Agencies

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))
24 DE Admin. Code 1100

PUBLIC NOTICE

1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 Del.C. §1106(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify the bases and procedures for appeals to the dental and dental hygiene clinical examinations.

The Board will hold a public hearing on the proposed rule change on June 18, 2015 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 3, 2015.

1100 Board of Dentistry and Dental Hygiene (Break in Continuity of Sections)

10.0 Practical (Clinical) Examination

~~Purpose. This regulation clarifies eligibility to take the practical (clinical) examination in dentistry and dental hygiene administered by the Board and identifies when successful examination scores expire.~~

(Break in Continuity Within Section)

- 10.5 Any dentistry or dental hygiene applicant who fails the practical clinical examination may appeal the Board's decision. Such appeal shall be filed in writing with the Director of the Division of Professional Regulation within 20 days of the date of notification by the Board. Appeals are based on the facts surrounding the examiners decisions during the examination. Appeals based on patient behavior, tardiness, or failure to appear will not be considered.
- 10.5.1 Appeal hearings shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.
- 10.5.2 The Board's scoring of the examination is presumed correct, and the burden of proof at an appeal hearing is on the appellant to prove otherwise. The appeal is limited to a determination of whether there exists substantial evidence to support the judgment of the examiners at the time of the examination.

PROPOSED REGULATIONS

10.5.2.1 The appeal panel may only consider documents, radiographs, and materials submitted during the examination that remain in the possession of the Board. The panel will not consider documentation or evidence that was not part of the examination, including opinions of the candidate or any other party, academic records, or letters of reference. The panel will not consider radiographs, photographs, or models of a patient taken after the completion of the examination.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1100 Board of Dentistry and Dental Hygiene

DIVISION OF PROFESSIONAL REGULATION

1400 BOARD OF ELECTRICAL EXAMINERS

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))
24 **DE Admin. Code** 1400

PUBLIC NOTICE

1400 Board of Electrical Examiners

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to liability insurance, continuing education audits, inactive status, homeowner's permits, and exceptions to the license requirement are proposed to be amended.

A public hearing will be held on June 3, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be 15 days following the public hearing.

1400 Board of Electrical Examiners

(Break in Continuity of Sections)

2.0 Applications

- 2.1 Applications may be obtained in person during regular business hours, on the Division of Professional Regulation ("Division") website or by mail, ~~from the Division of Professional Regulation ("Division").~~ Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

(Break in Continuity of Sections)

3.0 Qualifications

- 3.1 An applicant shall submit proof of qualifications verified by affidavit on a form approved by the Board. Proof of experience requires an affidavit from the supervising licensed electrician describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, W-2 tax forms showing full-time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure exam.

-
- 3.2 Applicants relying on military training and experience must submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted at the discretion of the Board when supervisory officials are not available or cannot be located.
 - 3.3 The requirement of two years of technical training under 24 **Del.C.** §1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.
 - 3.4 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 **Del.C.** §1402(10) - (13).

4.0 Examinations

- 4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance (in accordance with subsection 6.1), and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.
- 4.2 ~~Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.~~

5.0 [Reserved]

6.0 License and Insurance

- 6.1 Licensees with the exception of Journeypersons and Apprentice Electricians shall maintain general liability insurance of at least \$300,000.00. Proof of insurance must be submitted with licensure applications and maintenance of the required insurance during the licensure period shall be attested to in the course of each licensure renewal.
- 6.2 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his employer must maintain separate insurance for that risk as provided under these regulations.
- 6.3 Master and Limited Special Elevator Electricians do not need general liability insurance if the licensee's employer has general liability insurance. Elevator applicants and licensees agree to work only for an elevator company who maintains a general liability insurance policy for all of its employees, in the minimum amount of \$300,000.00.

7.0 Expiration and Renewal

- 7.1 The licenses granted by the Board must be renewed by June 30th of each even numbered year, otherwise, they expire as of July 1st.
- 7.2 Renewal. It is the responsibility of the licensee to file a renewal application with the Board. The Board is not required to notify licensees of expiration dates. Renewal may be accomplished online at www.dpr.delaware.gov.
 - 7.2.1 Renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within 60 days after the renewal deadline. Licensees must then submit the documentation requested by the date indicated on the audit notice.

PROPOSED REGULATIONS

- 7.2.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by ~~Regulation Section 8.0~~ and must also attest to maintenance of the liability insurance required by ~~Regulation Section 6.0~~. Attestation shall be completed electronically. Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage both at the time of renewal and during the biennial period that is the subject of the audit.
- 7.3 A licensee may renew an expired license within one year after the renewal deadline by meeting all requirements and paying a late fee set by the Division. All late renewals will be audited for compliance with the CE and insurance renewal requirements.
- 7.4 A licensee with an valid active license may request in writing to be placed on inactive status. Inactive status can be renewed electronically on a biennial basis by attestation of completing the required CE for licensure. Inactive licenses may be reactivated by the Board upon written request with proof of insurance (as required in accordance with Section 6.0) and payment of the appropriate fee set by the Division.

(Break in Continuity Within Section)

8.0 Continuing Education

(Break in Continuity Within Section)

- 8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in subsection 8.1.2 at least 60 days before the CE course is being offered.
- 8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in subsection 8.2.2.

(Break in Continuity of Sections)

10.0 Exceptions.

- 10.1 No license is required for performing electrical work by the following persons or entities:
- 10.1.1 ~~A professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board and who is licensed and listed on the Delaware Association of Professional Engineers as the person responsible for the plant repairs, maintenance, and electrical additions;~~ Any of the following individuals working in a manufacturing or industrial facility:
- 10.1.1.1 An electrical engineer who is recognized by their company as the person responsible for facility repairs, maintenance, or electrical additions, and who is registered with the Board, or a professional electrical engineer who is registered with the Board and who is licensed and listed on the Delaware Association of Professional Engineers;
- 10.1.1.2 An electrical engineer or electrical engineering technician, recognized by the manufacturing or industrial company as qualified, working in a laboratory environment conducting basic research and development;
- 10.1.1.3 An "in-house" electrical engineer, electrical engineering technician, or other person conducting research and development building and testing a custom panel designed by the company and not commercially available, provided that such exception shall not extend to the permanent installation of the equipment;
- (Break in Continuity Within Section)***
- 10.1.9 ~~Factory trained, and authorized and employed representatives; provided such persons do only maintenance, start up, commissioning and repair work directly on their factory manufactured equipment and may not supervise non-licensees as part of such work.~~

(Break in Continuity of Sections)

12.0 Required Inspection.

(Break in Continuity Within Section)

12.2 An application for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules subsections 12.7, 12.8, or 12.9, containing at least the following information:

(Break in Continuity Within Section)

12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule subsection 12.2.

(Break in Continuity Within Section)

12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection as provided in Rule Section 12.0 by an inspection agency licensed by the Board.

(Break in Continuity Within Section)

13.0 Organization of the Board

(Break in Continuity Within Section)

13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant Specialist from the Division of Professional Regulation and approved by the Board.

14.0 Homeowners Permits

(Break in Continuity Within Section)

14.8 Homeowner permits may only be issued for free standing structures and single family dwellings.

15.0 Inspection agencies

(Break in Continuity Within Section)

15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule subsection 15.3 must be successfully completed.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the regulation is available at:**

1400 Board of Electrical Examiners

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Sections 132(e), 507; 508 and 29 Delaware Code, Section 8404(8)

(17 Del.C. §§132(e), 507 & 508; 29 Del.C. §8404(8))

2 DE Admin. Code 2309

PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

Background

PROPOSED REGULATIONS

As authorized under 17 Del.C. §§132(e), 507, 508, and 29 Del.C. §8404(8), inter alia, the Delaware Department of Transportation, ("DelDOT"), through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations regarding development coordination.

The current regulations were enacted in March of 2015. The proposed regulations address some sections of the manual that were inadvertently changed during final adoption as well as proposed regulations that address procedural changes in the way we do business, and the addition of clarifying language. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations.

Public Comment Period

DelDOT will take written comments on these proposed general revisions to Section 2309 of title 2, Delaware Administrative Code, from May 1, 2015 through May 31, 2015. The public may submit their comments to:

Marc Coté, P.E., Assistant Director, Planning Development Coordination via email (Marc.Cote@state.de.us) or in writing to his attention:

Division of Planning
 Delaware Department of Transportation
 P.O. Box 778
 Dover, DE 19903

The following table is the list of proposed changes by chapter for the use of the public to easily locate the proposed changes:

Existing Development Coordination Manual Regulations can be found in the DE Administrative Code at: http://regulations.delaware.gov/AdminCode/title2/2000/2300/2309.shtml#TopOfPage			
Summary of Proposed Changes to the Development Coordination Manual (due to the size of the actual regulations, the affected chapters are available in their entirety at the links provided in this posting)			
Sec/Fig	Para.	DelDOT Comment/Proposed Change	Justification
P.4.2	1 st	Add clarifying language regarding No Objection to Recordation (LONOR) issuance: " <u>except in such individual cases where DelDOT determines that the proposal does not create any transportation impacts and does not trigger entrance/access improvements that would require further review by the Department.</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.
P.6.B	-	Add clarifying language regarding Letter of no Contention (\leq 199 ADT LONC) or LONOR issuance: " <u>as required (or exempted) in P.4.2</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.
P.7.B	-	Add clarifying language regarding Letter of no Contention (\geq 200 ADT LONC) or LONOR issuance: " <u>as required (or exempted) in P.4.2</u> "	Allows for administrative correspondence to peer agencies when proposed site changes would pose "No Impact" with respect to DCM requirements.

3.4.2.F	-	Add language directing users to more information: " <u>and Appendix M for more information</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
4.3.7.U	-	Add language directing users to more information: " <u>(see Appendix M for example)</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
4.4.3.U	-	Add language directing users to more information: " <u>(see Appendix M for example)</u> "	Provide additional data to assist users in developing the Traffic Generation Diagram.
5.5.4	2nd	Add clarifying language. See Section 5.5.4 for full details of the revision.	Expanded list of site-conditions provided to help explain when additional underdrain may be required.
6.4.1.G.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 form available online at http://accounting.delaware.gov/w9_notice.shtml</u> "	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.
6.5.1.E.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 form online available online at http://accounting.delaware.gov/w9_notice.shtml</u> "	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.
6.5.2.1	3	Revised Language: "Upon receipt of approved construction drawings and following review of items required in Section 6.5.1, the Public Works Engineer will evaluate the items specified in Section 6.5.2 prior to issuance of a permit for entrance construction <u>final "Notice to Proceed" letter</u> . The permit will serve as the notice to proceed , allowing the developer to proceed with permanent street construction within the subdivision."	Previous text incorrectly described a "Permit" process. Text revised to follow current practice.
6.7.1.D.3	-	Add clarifying language: "This requires completion of a <u>Federal W-9 form and a Delaware State Substitute W-9 Form online available online at http://accounting.delaware.gov/w9_notice.shtml</u> "	Text is updated to explain that a Federal W-9 Form is required along with Delaware State Substitute W-9 form.
6.7.3.B	1	Language Replaced. See Section 6.7.3.B for full details of revision.	Paragraph replaced to reflect current practice, and correct clerical error that was made during manual revisions that occurred prior to adoption.

PROPOSED REGULATIONS

8.2	1	Add Language to allow for more expedient resolution of improper entrance usage pending notification and actual construction process being complete. See Section 8.2 for full details of revision.	Situations occur where ongoing use of an improper entrance (or use of non-permitted access) poses traffic or safety concerns, current process results in lengthy delays pending implementation of full notification process and eventual construction work.
8.2.D	-	Add new action to listed steps for resolution of improper entrance usage. Allow for streamlined process when voluntary compliance is achieved. See Section 8.2.D for full details of revision.	When there are no physical entrance improvements that must be removed or corrected, the notification/construction part of this process adds much delay. The ability to pursue voluntary compliance provides greater benefit much more quickly.
8.5.2	-	Revise Language in this Section to resolve confusing regulation. See Section 8.5.2 for full details of revision.	The text has been revised to better define a threshold between being able to utilize a standardized improved entrance as shown in Figure 8.5.2-a vs. requirement for a full entrance plan submission.
Figure 8.5.2-a	-	Minor revisions including updates to reflect changes within Section 8.5.2 listed above. See Figure 8.5.2-a for full details of revision.	Changes to the figure's legend provide updates to reflect changes proposed in Section 8.5.2. Additionally: the term "Min." for lane/shoulder widths has been edited for consistency, and the "revised date" label has been removed.
8.5.2	-	Add Language in this Section to require an MOT Plan and a Lines and Grades Plan to allow for adequate consideration of traffic safety and constructability prior to permitting. See Section 8.5.2 for full details of revision.	Practice in the field has demonstrated there are potentially gaps in the consideration of traffic safety and constructability vs. the more detailed requirements used when completing a full entrance plan submission.

Please Note: Due to the size of the proposed regulation it is not being published here. The following links to the several parts of the proposed regulation are provided below:

- Preface (<http://regulations.delaware.gov/register/may2015/proposed/Preface.pdf>)
 Chapter 3 Record Plan Design (<http://regulations.delaware.gov/register/may2015/proposed/Chap3.pdf>)
 Chapter 4 Construction Plans (<http://regulations.delaware.gov/register/may2015/proposed/Chap4.pdf>)
 Chapter 5 Design Elements (<http://regulations.delaware.gov/register/may2015/proposed/Chap5.pdf>)
 Chapter 6 Construction Administration (<http://regulations.delaware.gov/register/may2015/proposed/Chap6.pdf>)
 Chapter 8 Miscellaneous Access Guidelines (<http://regulations.delaware.gov/register/may2015/proposed/Chap8.pdf>)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold-stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 727

REGULATORY IMPLEMENTING ORDER

727 Credit for Experience for Educators and for Secretarial Staff

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff. This regulation is amended to clarify the credit for experience received for individuals who graduate from a five year preservice program as defined in the regulation and for individuals who graduate from a four year preservice program with a GPA of 3.75 or higher.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **February 27, 2015**, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff in order to clarify the credit for experience received for individuals who graduate from a five year preservice program as defined in the regulation and for individuals who graduate from a four year preservice program with a GPA of 3.75 or higher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 727 Credit for Experience for

Educators and for Secretarial Staff hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 727 Credit for Experience for Educators and for Secretarial Staff in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **April 16, 2015**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of April 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 16th day of April 2015

727 Credit for Experience for Educators and for Secretarial Staff

1.0 Educators Graduating from a 5 Year or 4 Year Preservice Program

1.1 Definitions

1.1.1 The following words and terms when used in this subsection shall have the following meaning unless the context clearly indicates otherwise:

“**Eligible Employee**” includes, but is not limited to, teachers, nurses, librarians, psychologists, therapists, and counselors paid in accordance with 14 **Del.C.** §1305 that were hired into their first professional position after June 30, 2001 and zero years of experience. The exception to the zero years of experience would be an employee who qualified for military experience credit under 14 **Del.C.** §1312(a) and 14 **DE Admin. Code** 706.

“**Five Year Preservice Program**” means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

“**Four Year Preservice Program**” means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

“**Grade Point Average (GPA)**” means the grade point average (GPA) stated on the official transcript of the regionally accredited college or university granting the bachelor’s degree in the Four Year Preservice Program.

1.2 Pursuant to 14 **Del.C.** §1312(a), ~~a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule. one year of experience on the applicable state salary schedule shall be granted to:~~

1.2.1 A graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent; or

1.2.2 A graduate of a five year preservice program as defined above.

1.3 An employee eligible for one year of credited experience shall meet the definition of Eligible Employee in 1.1 and meet the requirements of 1.2.

2.0 Administrators

No credit for experience shall be given for part time employment in administrative or supervisory positions.

3.0 Teachers

- 3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.
- 3.1.1 A "**regular part time**" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

4.0 Secretarial Staff

Secretaries may be granted one (1) year's of experience for each creditable year of experience as a secretary in private business, public or private school, or other governmental agency.

5.0 Creditable Experience

Creditable experience includes experience obtained while working outside of Delaware.

6.0 Applicability

This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 **Del.C.** Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 **Del.C.** Ch. 13.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 923

REGULATORY IMPLEMENTING ORDER

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to presumptively include the eligibility for extended school year reading services in a student's IEP for students who are not beginning to read by age seven.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **February 3, 2015**, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities related to the inadvertent omission of the language "or are otherwise specifically authorized by statute" in subsection 6.2. The Department amended 6.2 to add this language.

Additionally the State Board of Education asked that the parent decline clause as listed in Regulation 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs be added to Regulation 923. The Department added such language in subsection 6.7 of this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart

B General Duties and Eligibility of Agencies as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to presumptively include the eligibility for extended school year reading services in a student's IEP for students who are not beginning to read by age seven.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.

Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **April 16, 2015**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of April 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 16th day of April 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079(a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

6.0 Extended School Year Services

- 6.1 General: Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with 6.2.
- 6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, that the services

are necessary for the provision of FAPE to the child [or are otherwise specifically authorized by statute].

(Break in Continuity Within Section)

- 6.7 Reading acquisition: Notwithstanding any contrary provision in this section, if a child is not beginning to read by age seven, or is beyond age seven and not yet beginning to read, the team shall presumptively include extended year services in the IEP which incorporate evidence-based interventions that address the child's inability to read. [The parent may decline reading-based extended school year services. In addition, ~~it~~the team may decline to include such extended school year services in the IEP only if the team provides a specific explanation in the IEP why such services are inappropriate.

(Break in Continuity of Sections)

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 618 (18 DE Reg. 618). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

923 Children with Disabilities Subpart B, General Duties and Eligibility of Agencies

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 925

PUBLIC NOTICE

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to clarify that eligibility for reading-based extended school year services shall be determined in accordance with 14 DE Admin. Code §923.6.0.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **February 3, 2015**, in the form hereto attached as *Exhibit "A"*. Letters were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulations as it was originally published.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs as requested by the Governor's Advisory Council for Exceptional Citizens in regard to Senate Bill 229 of the 147th General Assembly in order to clarify that eligibility for reading-based extended school year services shall be determined in accordance with 14 DE Admin. Code §923.6.0.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.

Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as *Exhibit "B"* is hereby

amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **April 16, 2015**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of April 2015.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 16th day of April 2015

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

***Please note that no changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 621 (18 DE Reg. 621). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

925 Children with Disabilities Subpart D

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)y and z (16 **Del.C.** §122(3)y and z)
16 **DE Admin. Code** 4408

ORDER

4408 Facilities that Perform Invasive Medical Procedures

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Facilities that Perform Invasive Medical Procedures. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Del.C.** §122(3)y and z.

On February 1, 2015 (Volume 18, Issue 8), DHSS published in the *Delaware Register of Regulations* its notice

of proposed regulations, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 3, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Facilities that Perform Invasive Medical Procedures were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Entities offering written comments include:

- Planned Parenthood of Delaware, Ruth Lytle-Barnaby
 - Medical Society of Delaware, Stephen J. Kushner, M.D., President and the Delaware Chapter of the American Congress of Obstetricians and Gynecologists (ACOG), Janice Tildon-Burton, M.D., Chair
- Public comments and the DHSS (Agency) responses are as follows:

Planned Parenthood of Delaware, Ruth Lytle-Barnaby:

Planned Parenthood of Delaware objects to the text of the proposed change in Section 2.0 of Regulation 4408, concerning invasive medical procedures.

Although we agree with the goals of the Division of Public Health in the proposed change, and we ourselves are in full compliance with the Regulation, the proposed draft addresses the issue faced by the Division in a flawed and inadequate way.

We understand that the genesis of the proposed change to the Regulation arises from claims by a health care provider that it operates under standards which do not require adherence to the standards in the Regulation, that Regulation 4408 does not apply to it, and that it will not seek external accreditation. We agree that the Division's standards, as expressed in the Regulation, do and should apply to this provider. Yet, we believe that a different approach is advisable, to address the issue more broadly, and in a way that does not target providers of abortion.

The proposed change would alter the definition of anesthesia to read, "'Anesthesia' means anxiolysis, conscious sedation, deep sedation, major conduction anesthesia, minimal sedation, moderate sedation or general anesthesia and all anesthesia, including local anesthesia, used for surgical abortions. For invasive medical procedures other than surgical abortions, the following shall be excluded from the definition of anesthesia: This definition excludes: (1) local anesthesia, (2) the administration of less than 50% nitrous oxide in oxygen with no other sedative or analgesic medications by any route, or (3) a single, oral sedative or analgesic medication administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain."

We recommend that the Regulation be changed differently, by making two changes.

The first would be to amend the second sentence of section 1.0 to read:

These regulations establish standards with respect to the safe and sanitary conditions, and require the accreditation of any facility that performs invasive medical procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation, or in which anesthesia or sedation is in fact used.

The second would be to modify the definition of Invasive Medical Procedure, to read:

"Invasive Medical Procedure" means any medical procedure, including dental and podiatric procedures, in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation, or in which anesthesia or sedation is in fact used.

These changes would make clear that the Division's standards apply to any instance where anesthesia or sedation is used. The definition of anesthesia need not be changed, and certainly need not be changed by reference to whether the procedure involves abortion. All invasive surgery using anesthesia or sedation should be covered - whether or not the accepted standard of care requires anesthesia or sedation - and the current exemptions, such as for local anesthesia, could continue to apply. The Division faces a situation where a provider is using anesthesia, not exempted by the Regulation, but claims that its "accepted standard of care" does not require it. The changes we propose would address this provider's claim, and foreclose use of this claim in the future by others who might be using a variety of procedures.

Delaware has been able to regulate its medical practitioners based on broadly-applicable standards without resort to targeting abortion providers. The issue here does not require deviating from this standard.

Evasion of Regulation 4408 can be addressed without reference to a single type of procedure, as can a clarifying change to the Regulation to make unmistakable its application to the provider in question.

Agency Response: The Agency appreciates and acknowledges these comments. To ensure that patients undergoing a surgical abortion receive care in a safe and sanitary setting, as was the clear intent of the General Assembly, the regulations will remain as written.

Medical Society of Delaware, Stephen J. Kushner, D.O., President and the Delaware Chapter of the American Congress of Obstetricians and Gynecologists (ACOG), Janice Tildon-Burton, M.D., Chair:

On behalf of the Medical Society of Delaware (MSD) and the Delaware Chapter of the American Congress of Obstetricians and Gynecologists (ACOG), thank you for the opportunity to provide comments. The proposed changes, although short, have repercussions that are concerning to us both in precedent and in application.

While we recognize the statutory requirements and legislative history that have informed the decision to propose these changes, we cannot support the proposed regulatory change and urge that the Department take a hard look at alternative language. As proposed, this approach deviates sharply and dangerously from the procedure-neutral approach previously supported by our organizations and instead creates overbroad harm and poor precedent.

We feel strongly that the state cannot and should not have it "both ways" in their approach. Either there is a neutral decision that local anesthesia for all procedures triggers the regulations or it is stated clearly and plainly that the intent is to restrict abortion services.

As-written, these regulations will have unintended consequences of not only limiting abortion services, but also being over inclusive to include procedures that are "surgical abortions" but are related to miscarriages, gestational demise, and other procedures that are performed safely outside of a Facility and in an office.

We urge the Department to remain procedure-neutral.

Thank for your attention to our concerns. We appreciate your willingness to ensure that Delawareans are receiving the best care possible and share your goals in this matter.

Agency Response: The Agency appreciates and acknowledges these comments. To ensure that patients undergoing a surgical abortion receive care in a safe and sanitary setting, as was the clear intent of the General Assembly, the regulations will remain as written.

The public comment period was open from February 1, 2015 through March 3, 2015.

Based on comments received during the public comment period, no changes have been made to the proposed regulation. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, no changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Facilities that Perform Invasive Medical Procedures are adopted and shall become effective May 11, 2015, after publication of the final regulation in the Delaware *Register of Regulations*.

Rita M. Landgraf, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the February 2015 issue of the *Register* at page 623 (18 DE Reg. 623). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4408 Facilities that Perform Invasive Medical Procedures

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)v (16 Del.C. §122(3)v)
16 DE Admin. Code 4453

ORDER

4453 Regulations Governing Cosmetology and Barbering

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Cosmetology and Barbering. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122(3)v.

On January 1, 2015 (Volume 18, Issue 7), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 31, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Cosmetology and Barbering were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from January 1, 2015 through January 31, 2015.

No comments were received on the proposed regulation during the public comment period and only technical changes have been made to the proposed regulation. The regulation has been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

No public comments were received and only technical changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Cosmetology and Barbering are adopted and shall become effective May 11, 2015, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

4453 Cosmetology and Barbering

1.0 General Provisions

(Break in Continuity Within Section)

- 1.6 Effective Date. These Regulations shall become ~~are~~ are [adopted on (date) and have an] effective [date of on] October 11, 2014 [April May] 11, 2015.

*Please note that no additional changes were made to the regulation as originally proposed and published in the January 2015 issue of the *Register* at page 512 (18 DE Reg. 512). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4453 Regulations Governing Cosmetology and Barbering

FINAL REGULATIONS

DIVISION OF PUBLIC HEALTH

OFFICE OF ANIMAL WELFARE

Statutory Authority: 16 Delaware Code, Sections 3004F(d) and 3008F9(a)
(16 Del.C. §§3004F(d) & and 3008F9(a))

ORDER

4501 Regulations For Animals Held in Shelter

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Regulations for Animals Held in Shelter. The DHSS proceedings to promulgate the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122(3)p.

On February 1, 2015 (Volume 18, Issue 8), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 10, 2015, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations. In addition, a public hearing was held on February 23, 2015 at the DelDot Building, 800 Bay Road, Dover, Delaware.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations governing Animals Held in Shelter were published in the *Delaware State News*, the *News Journal*, and the *Delaware Register of Regulations*. Written comments were received on proposed regulations during the public comment period (February 1, 2015 through March 10, 2015). A public hearing was held on February 23, 2015 to receive verbal comments regarding the proposed regulations. Comments were received by the following:

- Doug Beatty
- Tiffany Briddell, Shelter Manager, Delaware SPCA
- Felicia Cross, Executive Director, Forgotten Cats
- Rebecca Ferrer
- Jackie Figart
- Carol Furr
- Deborah Hamilton and Cheryl Heiks, Best Friends Animal Society
- Leora Briggs Hansa
- Caroline Hughes, VMD, President, Delaware SPCA
- Bryce Hurd
- Roberta A. Jackson, VMD, President, Delaware Board of Veterinary Medicine
- Sherene Lindo
- Sue Martell
- Tacia McIlvaine
- Janet Mitchell, VMD, President, Delaware Veterinary Medical Association
- Jane Pierantozzi, Executive Director and Bob Wasserbach, President, Faithful Friends Animal Society
- Araina Sala
- Catherine Samardza
- Dr. Ann Scharf
- Richard Shehorn, Jr.
- Velvet Sponaugle
- Kevin Usilton, Executive Director, First State Animal Center and SPCA

- Sherri Warburton, Director of Animal Control, Delaware Animal Care and Control and First State Animal Center and SPCA
- Anita Wollison

In addition, comments were received by Marlene Oetzel, Beth Suydam and Patrick Carroll, but since the comments did not address the proposed regulations, they are not included here but they have been reviewed and are on file with the OAW.

Please note that comments included here are those that pertain directly to the proposed regulations. Those that did not address the regulations have not been incorporated. In some cases, it was necessary to summarize comments.

Public comments and the DHSS (Agency) responses are as follows:

Tiffany Briddell, Shelter Manager, Delaware SPCA

- My first comment involves training and certification for the euthanasia technicians. How would stress management be provided to them?

Agency Response: The Agency appreciates and acknowledges these comments. Per regulation 4.2, stress management is included in the core curriculum of the training course required for certification.

- We are hoping to establish our own training program or protocol to train our employees. We would like a list of determining factors in the exclusion of the program if we are able to conduct our own training.

Agency Response: The Agency appreciates and acknowledges these comments. The regulations allow the Office of Animal Welfare to certify existing training courses, such as those offered in other states, which meet the standards set forth in 5.1. However, the organization or institution providing the training may not be an animal shelter in Delaware. To clarify, the Agency will revise regulation 5.1 to read "Any organization or institution desiring to conduct a euthanasia technician certification education program shall apply to the Office of Animal Welfare and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying euthanasia technicians and that it is prepared to meet other standards which may be established by the Office. The organization or institution may not be an animal shelter in Delaware."

Felicia Cross, Executive Director, Forgotten Cats, Inc.

1. Euthanasia should only be done by veterinarian.

Agency Response: The Agency appreciates and acknowledges these comments. Since 1985, Delaware law has permitted euthanasia of shelter animals by someone other than a veterinarian due to the potential volume of animals. The shelters will be responsible for ensuring that anyone who is not a licensed veterinarian, nationally certified euthanasia technician, or licensed veterinary technician performing euthanasia in their facility on shelter animals will be trained and certified according to these regulations. The purpose of these regulations is to ensure that when euthanasia is performed, it is done accurately and with compassion, minimizing distress and discomfort. The regulation will remain as written.

2. 10.2.3.6 the floor of the area shall provide dry, non-slip footing to prevent accident, and 10.2.3.7 the area shall be one that can be easily cleaned and disinfected, should be requirements for the entire facility not specifically listed under euthanasia.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 10.0 refers to euthanasia practices only, as required by 16 Del.C. §3004F, and therefore cannot be broadly applied to the rest of the facility. The conditions, equipment and supplies required are for the euthanasia area only. The regulation will remain as written.

3. 10.2.2.2 response protocols for accidental exposure of humans to euthanasia drugs or pre-euthanasia anesthetics and 10.2.2.3 Material Data Sheets for euthanasia drugs and pre-euthanasia anesthetics pertain to personnel protection and have nothing to do with animal welfare. I don't believe you should be telling shelters what supplies to have in a room as long as they are adhering to their protocol.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 10.0 is written to ensure the safety of both animals and people. It is important to have the euthanasia room properly equipped in order for a safe and humane procedure to take place. The environment and equipment requirements are in keeping with euthanasia protocols recommended by American Veterinary Medical Association, Humane Society of the United States and Association of Shelter Veterinarians. The regulation will remain as written.

Carol Furr, Leora Briggs Hansa, Catherine Samardza, Richard Shehorn, Jr., Tacia McIlvaine, Sherene

Lindo, Dr. Ann Scharf, Velvet Sponaugle, Douglas Beatty, Rebecca Ferrer, Anita Wollison

It is disturbing that some things are not addressed in these regulations. For example, shelters are required to have a rescue registry, to work with placing animals rather than euthanizing them. The law is not specific, allowing shelters to pick and choose which rescues to work with, and euthanizing animals even if a rescue steps forward. Complaints concerning this issue have been brought to OAW multiple times, both as a formal complaint and as the subject in meetings with OAW's director. Yet there is nothing in the regulations concerning this shelter standard.

Agency Response: The Agency appreciates and acknowledges these comments. The law mandates that animal shelters shall establish and maintain a registry of organizations willing to accept animals for the purpose of adoption or long-term placement, but it does not specify that shelters must work with every rescue group. As rescues are not currently regulated or evaluated by the state or an independent overseer, it is up to the animal shelter to determine which rescues to which they will transfer animals and the criteria they use in evaluating those rescues. So long as the shelters establish and maintain a rescue registry that includes various rescues, including breed specific rescues, they have met the requirements of the law. Therefore, the regulations will remain as written.

Additionally, the laws and the regulations refer to "unadoptable animals" and "temperament." Neither term is defined, nor are there criteria to determine how animals are declared unadoptable or how a behavioral assessment is made. And this despite the fact that the temperament tests/behavioral assessments at First State Animal Center and SPCA have been questioned and criticized by both private citizens, the New Castle County audit and a NCC police officer sent to inspect the shelter for contractual compliance.

Agency Response: The Agency appreciates and acknowledges these comments. The term "unadoptable animals" is not used in the law nor in regulations and therefore, a definition is not required. To clarify, state law does not currently include a provision that animals be classified as "adoptable" or "unadoptable" in making decisions about euthanasia. The law instead lists the conditions that must be met before an animal is euthanized in 16 Del.C. §3004F. None of these requirements includes classifying an animal as "unadoptable". An animal shelter may euthanize an animal provided all six conditions of 16 Del.C. §3004F(b) are met, or if necessary to alleviate undue suffering or to protect shelter staff and/or other sheltered animals from an animal's severe aggression or contagious deadly health condition. As this comment does not address current language in the law or regulations, the regulations will remain as written. In addition, "temperament" is being removed from Regulation 11.1.3. As a result, temperament is only used once in the regulations (8.3) in the context of vaccinations and not euthanasia. Therefore, a definition is not warranted.

2.0 "Intake rate" should be more clearly defined; animals that are not in the shelter ("field documented") should not be included in the total, nor should animals that are brought to a shelter simply for spay/neuter/vaccination services.

Agency Response: The Agency appreciates and acknowledges these comments. Intake is defined in 2.0 as "number of live animals for which the animal shelter assumes responsibility and are admitted for temporary shelter and care", so as to not be interpreted to include animals that are brought in for spay/neuter or returned in the field. The Agency will change "responsibility" to "custody" to clarify this point. In addition, a second sentence will be added to the definition which reads "This shall include animals admitted to the shelter, foster care, or a satellite location."

3.3.4 Shouldn't this read "*an approved training course?*"

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 3.3.4 to read "Has successfully completed an approved euthanasia training course".

3.3.6 Shouldn't the certifying veterinarian be an outside agent from the shelter in question to prevent bias and preferential treatment?

Agency Response: The Agency appreciates and acknowledges these comments. The shelter veterinarian is the person overseeing the certified euthanasia technicians in the shelter and for that reason, needs to be comfortable with their level of skill and performance. The shelter veterinarian is also in the best position to assess the competency of the technician. However to receive certification by the Office of Animal Welfare, a person must first satisfy the requirements in 3.3, including the submission of proof of proficiency as documented by the shelter veterinarian. Therefore, the regulations will remain as written.

4.0 Twelve (12) hours seems like a short period of time to certify a person to safely and humanely kill animals.

Agency Response: The Agency appreciates and acknowledges these comments. This is the minimum requirement and does not preclude further training. Some individuals may require additional practical training, as determined by the shelter or consulting veterinarian, to meet the proficiency requirement. In drafting this regulation, national training programs and other states' regulations regarding euthanasia technician training programs were used as reference. The regulations will remain as written.

5.0 This section solicits organizations/institutions to step forward to conduct this training program. This training should not be provided by any shelter or shelter staff that is currently operating, and the regulations should make that clear. Otherwise, what's the point of this regulation?

Agency Response: The Agency appreciates and acknowledges these comments. This provision is included to allow the Office of Animal Welfare to certify existing training courses, such as those offered in other states, which meet the standards established in regulation 5.0. The Agency will revise regulation 5.1 to read "Any organization or institution desiring to conduct a euthanasia technician certification education program shall apply to the Office of Animal Welfare and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying euthanasia technicians and that it is prepared to meet other standards which may be established by the Office. The organization or institution may not be an animal shelter in Delaware."

7.3 Revocation of certification. This states that if a euthanasia technician fails to meet the original terms of certification, OAW "may" revoke the certification. This should be "shall." The only thing worse than laws based on the honor system are regulations that are voluntary in nature.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 7.3 to change "may" to "shall".

7.4 This section says that concerns regarding any euthanasia technician's behavior or proficiency or animal handling should be reported to OAW. But nothing follows this statement. Shouldn't there be a required investigation noted here? Because in the law, or regulations, we have learned the hard way that if it isn't written down, it doesn't count.

Agency Response: The Agency appreciates and acknowledges these comments. The OAW already has enforcement authorization under 16 **Del.C.** §3008F and has the powers to conduct investigations or inspections as necessary. Therefore, the regulations will remain as written.

8.3 Refers to vaccines and who can administer them. Refers to "trained shelter personnel" with no definition or criteria for that training.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the last sentence of 8.3 to read "Vaccines shall be given as soon as safe to do so and be administered by a licensed veterinarian, a veterinary technician, or trained shelter personnel under the direction of a veterinarian, veterinary technician or animal care manager."

8.4 Refers to examination of animals within 72 hours of entry to shelter. Again, refers to "shelter personnel with knowledge and training in animal health assessment." No criteria to determine that knowledge.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of 8.4 to read "Exam must be performed by a licensed veterinarian, veterinary technician, or shelter personnel with knowledge and training in animal health assessment under the direction of a veterinarian, veterinary technician or animal care manager."

10.1 Lists those who can perform euthanasia, but does not list a Delaware, OAW certified technician. Why not? This section does mention a "person certified by a licensed veterinarian as proficient." This phrase should be removed and replaced with "a technician certified by the Office as determined in Section 3.0."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 10.1 to read "... or a person certified by a licensed veterinarian as proficient to perform euthanasia (hereby referred to as certified euthanasia technician) after completion of the certification requirements outlined in regulation 3.0. The certified euthanasia technician is only permitted to perform euthanasia on shelter animals within the animal shelter of which they are employed. No one other than the shelter or consulting veterinarian may perform euthanasia on privately owned animals."

10.2 and 11.3 Allowing the use of three separate euthanasia manuals will result in lack of consistency in the shelters. One manual - AVMA - should be determined as the euthanasia policy manual. In addition, there should be a note that the guidelines used must be the most current available.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 5.3 mentions these three organizations - AVMA, HSUS and AHA - as having OAW approved euthanasia technician training courses. Therefore, shelter veterinary staff should have the flexibility to have available the manual of the training program in which they participated. In addition, all three manuals are considered to be suitable reference materials for staff. The regulation does state "current copy" of euthanasia reference manual, requiring that the most current version to be used. The regulations will remain as written.

10.2.4.12 This section should require all shelters to comply with DEA requirements for controlled substances on the premises. Because it was noted in the 2012 NCC audit that FSAC (then KCSPCA) was in violation of DEA regulations.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency is making a revision to regulation 10.2.5 to address this issue, and will read "All chemical agents, pre-euthanasia anesthetics and euthanasia drugs used in the euthanasia area shall be clearly labeled, logged, and stored according to state and federal laws."

10.4 Euthanasia allowed in transport vehicles. This should only be allowed by a licensed veterinarian who can properly determine the condition of the animal in question.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 10.4 addresses emergency situations involving a severely injured or ill animal where attempting to move the animal would cause greater pain. The same rules governing who can perform euthanasia in an animal shelter as stated in 10.1 apply here. The regulations will remain as written.

11.1.3 Intracardiac injections (aka "heart stick" and "cardiac stick") is not a preferred form of euthanasia listed by AVMA or the Association for Shelter Veterinarians for shelter environments. And no euthanasia should be allowed solely due to an "animal's temperament." Determining an animal's temperament has not been established in these regulations nor by legislation. AND if a healthy animal has already been heavily sedated - as required - it should no longer be necessary to use a "heart stick."

Agency Response: The Agency appreciates and acknowledges these comments. As stated in Section 11.1.3, intracardiac injection is only to be used as a last resort when intravenous or intraperitoneal cannot be successfully administered due to animal's physical condition, and it is only to be administered by a veterinarian. Further, the regulation states that intracardiac (IC) injection may only be performed on a deeply anesthetized or unconscious animal so the animal is unable to feel pain. IC is currently an acceptable method of euthanasia listed in the most current edition of AMVA Guidelines (2013), pages 27-28. In certain cases, a veterinarian will need to deem the most appropriate and most humane method, and should have the discretion to make that judgment based on the situation. The regulation will remain as written.

11.5 Refers to the number of persons required to handle animals in any euthanasia procedure. Text reads "The handler should be trained in safe and humane animal handling techniques." Trained by whom? What criteria should be used to determine if a person is adequately trained?

Agency Response: The Agency appreciates and acknowledges these comments. The regulations will remain as written.

11.9 Why do these regulation discuss killing an entire litter of puppies or kittens and their mother? Why would this be necessary? Any exceptions allowing this should be noted, or this section should be removed to avoid the tacit permission implied to do this.

Agency Response: The Agency appreciates and acknowledges these comments. There may be medical conditions in which animals cannot be rehabilitated or that pose a significant health risk to animals or staff, such as Rabies. The purpose of this regulation is to minimize distress to the animals, should such a scenario arise. The Agency will revise the second sentence of 11.9 to read "When selected for euthanasia by the shelter veterinarian, mother animals should be euthanized prior to their offspring."

13.3.2 Confirmation of death - cardiac stick syringe - see our comments on 11.1.3.

Agency Response: The Agency appreciates and acknowledges these comments. In following the guidelines outlined by the AVMA and Association of Shelter Veterinarians, regulation 13.0 requires a combination of criteria in

reliably confirming death. Verification of death by cardiac puncture is an acceptable method. The regulation will remain as written.

13.3.3 Confirmation of death - "onset of rigor mortis." Rigor sets in at between 3 and 6 hours after death. 11.8 requires that "no animal shall be left unattended between the time euthanasia procedures are first begun and the verification of death." This section should be struck - because either someone will be sitting staring at a dead animal for hours, or that animal will be left unattended while rigor sets in.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 13.0 applies to any animal that dies in a shelter, not only animals that were euthanized. Rigor mortis is a definitive method for verification of death and would be a sufficient way to confirm death if an animal dies in a shelter of natural causes. As such, rigor mortis should remain in this section. To clarify, rigor mortis is one way that shelters may confirm death, it is not a requirement. They may instead verify by using stethoscope or by cardiac stick syringe. Therefore, the regulation will remain as written.

14.5 states that records must be maintained for a minimum of 24 months unless otherwise directed by the Department. Has anyone checked the State of Delaware retention policy for records such as this? The FOIA policies? We think that allowing a shelter to destroy records after two years will prevent any reasonable comparison or analysis of statistics, whether to demonstrate problems or improvements. In addition, there are no penalties listed here for any violations. Why not? Again, that sort of oversight is what caused so many problems with the laws.

Agency Response: The Agency appreciates and acknowledges these comments. The regulation does meet FOIA requirements, and statistics are being gathered on a quarterly and annual basis. A violation of this subsection is a violation of the law. Penalties are described in 15.3. However, to meet state requirements for state-funded organizations, and requirements set by 24 DE Admin. Code 3300, subsection 2.1.9, the Agency will revise regulation 14.5 to read "Records must be maintained for minimum of 48 months from the date created unless otherwise directed by the Department."

15.1.1 Unannounced inspections: the word "annually" implies that a yearly anniversary is known. Additionally, once a year is not enough, and regulations that only mandate one inspection will not result in consistent and thorough oversight. This should be a minimum of three times per year, no "annually" mentioned.

Agency Response: The Agency appreciates and acknowledges these comments. The regulation states that inspections will be performed at least annually, and that additional inspections may be conducted as the Department deems necessary. The regulations will remain as written.

15.1.2 Title 9 refers to dog control. It covers dog-at-large, dangerous and potentially dangerous dogs, and humane treatment standards for individuals and commercial kennels. Shelters are exempt from the humane treatment standards. What kind of crimes are being postulated here? That should be clarified. Currently, the "proper authorities" is FSAC. We do not believe this section is necessary if shelters are exempt from Title 9.

Agency Response: The Agency appreciates and acknowledges these comments. Proper authorities for Title 9 would be the Counties. Shelters are not exempt from Title 9. The regulation will remain as written.

15.3.1 No penalties are specified. Violations "may" be accompanied by an order of correction. Again, this establishes the regulations as optional on the part of the Office and Department, establishes no financial penalties and leaves the time frame of any corrective action unspecified. This should all be spelled out, with corrective orders required from the Office, so that there is no inconsistency in enforcement.

Agency Response: The Agency appreciates and acknowledges these comments. Penalties are described in 15.3. The timeframe will be determined as appropriate to the specific situation and the type and severity of the violation. The Agency will revise 15.3.1 to change "may" to "shall".

Deborah Hamilton and Cheryl Heiks, Best Friends Animal Society

Best Friends Animal Society is submitting the following comments on the Division of Public Health, Office of Animal Welfare proposed regulations for Animals Held in Shelter under statutory authority in Title 16, Sections 3004F(d) and 3008F(a).

Best Friends submits these comments acknowledging the advancement and limitations of the newly enacted

statute that does not authorize the full range of best practices in shelter standards for all animals. The regulations as proposed contain provisions that Best Friends interprets as vastly improving upon limited existing requirements for care and record keeping.

Best Friends supports the draft regulations as they apply to animal shelters (including rescue organizations that operate a brick and mortar shelter) and define:

- minimum standards of care and treatment;
- requirements for adoption and recovery;
- acceptable standards, methods and procedures of euthanasia;
- training and certification requirements for certified euthanasia technicians;
- record keeping obligations;
- procedures for inspections and complaints.

The protection and care for animals in shelters is the primary focus of this current proposal for regulation and is a core concern of shelter operators. Best Friends supports any and all additional actions to increase opportunities for placement and adoption of companion animals from shelters as a crucial goal of shelters to reduce the number of healthy animals euthanized reflecting the most basic freedom to live.

The training requirements in the proposed regulations focuses solely on "euthanasia". The code provisions enable animal shelters to impound or seize animals, however there is not specific training/handling requirements for working with these more challenging animals and their behaviors. Best Friends recommends that animal sheltering personnel should have adequate training in areas of their work in addition to euthanasia and including but not limited to rehabilitation and first aid. Training is an ongoing need and should reflect a continuous learning process.

Agency Response: The Agency appreciates and acknowledges these comments. Training for shelter personnel, beyond training for certified euthanasia technicians, is not required by law and is therefore provided at the discretion of each animal shelter. The regulation will remain as written.

In addition to adoption as companion animals, Best Friends would like to point out that for cats another successful outcome for healthy outdoor cats is to become part of a "Trapped, Neutered and Returned to Field Community Cat Program." Addressing this outcome for cats in future statutory authority and subsequent regulation is needed for the Office of Animal Welfare.

Best Friends recommends that in contemplating future consideration beyond companion animals, adding "other live outcomes" to the draft language and amended in the purpose statement revised to read: Section 1.2 Authority and Purpose - "The overall purpose of these regulations is to promote and ensure the protection and care of companion animals in animal shelters and to increase opportunities for their placement, adoption and other live outcomes."

Agency Response: The Agency appreciates and acknowledges these comments. The law as currently written concerns sheltered animals that may be suitable for adoption or placement. Therefore, the regulation will remain as written.

In addition, revision of the data collection by shelters should be expanded through revised language such as: Section 2.0 Definitions - "Euthanasia Rate" is the number measuring the numbers and types of animals that are being euthanized and for what type of animals in custody of an animal shelter (including privately owned) that are (strike "have been") euthanized including the reason for this outcome.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the definition of "Euthanasia rate" in regulation 2.0 Definitions to read "is the number of animals, by animal type, in custody of an animal shelter that have been euthanized. This shall not include euthanasia of privately owned pets."

Best Friends applauds the inclusion of language in the title for Section 9.0 Animal Adoption, Recovery and Rehabilitation. This acknowledgement of rehabilitation as part of the shelter care is a powerful message by inclusion of rehabilitation as part of the shelter mission. Additionally, the inclusion of standardized provisions for publication of stray animals and hours for potential reunification with owners or caregivers is in keeping with the intent of newly authorized statutory authority for Office of Animal Welfare.

In Section 11.0 Euthanasia Methods and Procedures for Animal Shelters, 11.1.3, it is worth noting that if the animal is "deeply anesthetized", his/her temperament or physical condition should never be problematic and ideally the option would be removed completely as it requires heavy sedation regardless, if that is the case, sedate the animal and use either 11.1.1 or 11.1.2.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 11.1.3 to remove the word "temperament". As stated in Section 11.1.3, intracardiac injection is only to be used as a last resort when intravenous or intraperitoneal cannot be successfully administered due to animal's physical condition, and it is only to be administered by a veterinarian. Further, the regulation states that intracardiac (IC) injection may only be performed on a deeply anesthetized or unconscious animal so the animal is unable to feel pain. IC is currently an acceptable method of euthanasia listed in the most current edition of AMVA Guidelines (2013), pages 27-28. In certain cases, a veterinarian will need to deem the most appropriate and most humane method, and should have the discretion to make that judgment based on the situation. The regulation will remain as written.

Section 14.0 covers Record Keeping and Reporting for Animal Shelters and Best Friends supports this requirement. Best Friends would like to note that the National Federation of Humane Societies Basic Matrix for shelter data reporting delineated can be found at <http://aspcapro.org/sites/default/files/nfhs-basic-matrix-fillable.pdf>. The Basic Data Matrix serves as a tool for data collection across a wide spectrum of agencies and puts forward the minimal amount of data a sheltering organization should collect, including "Return to Field" for cats.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 14.0 clarifies reporting requirements required by law, which will result in uniform data reporting from all animal shelters. In addition, definitions for adoption, euthanasia rate, and intake rate are included in regulation 2.0 to eliminate confusion and inconsistency in data reporting. Therefore, the regulation will remain as written.

Best Friends is deeply respectful of the legislative and Markell administration commitment to improved structure support for animal shelters and for animals in shelter environments. This is clearly reflected in the proposed regulations notwithstanding the additional work that remains to enact further modernization of animal protection statutory provisions. Thank you for your attention to the comments.

Caroline Hughes, VMD, President, Delaware Society for the Prevention of Cruelty to Animals

I am concerned that the regulations are over-reaching when they discuss pre-euthanasia anesthetics in part because many of these drugs are controlled substances that fall under the purview of the DEA and require a veterinarian to have licensure. It's the law. And Sections 1 and 7 specifically mention the ability to have the sodium pentobarbital, but it does not mention other drugs that constitute pre-use of euthanasia anesthetics. So I want to ensure that it is not implied that certified euthanasia technicians have access and full ability to use these drugs which would be outside the purview of other laws in the state.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 11.2 will be revised to read "Pre-euthanasia anesthetics shall be administered to animals who are aggressive, severely distressed, or frightened as directed by the shelter veterinarian. This does not prevent the use of pre-euthanasia anesthetics for other animals as instructed by the shelter veterinarian."

I'm concerned, from the Delaware SPCA's point of view of the cost of euthanasia training course. I'm also interested that in the definitions "euthanasia training course" was not defined.

Agency Response: The Agency appreciates and acknowledges these comments. The shelters will be responsible for ensuring that anyone who is not a licensed veterinarian, nationally certified euthanasia technician, or licensed veterinary technician performing euthanasia in their facility on shelter animals will be trained and certified according to these regulations. Any cost associated with meeting this requirement will be the obligation of the shelter or employee and may vary depending on where the training is obtained. However, to assist the animal shelters with compliance in the initial year, training is being provided at no cost to the shelters by the Office of Animal Welfare in spring 2015. In addition, the euthanasia training course is fully detailed in regulation 4.0. Therefore, a definition is not necessary. The regulation will remain as written.

In Section 4.1, it talks about a veterinarian certifying that these individuals have demonstrated competency in applying skills outlined in 4.2, but it does not further define how said veterinarian will demonstrate competency. So one veterinarian at one shelter may think it's fine to observe a technician inducing euthanasia on one animal. Another veterinarian may require ten procedures with their presence. And, therefore, I don't find this to be uniform or serving of the public or the animals across the State of Delaware.

Agency Response: The Agency appreciates and acknowledges these comments. The shelter veterinarian is the person overseeing the certified euthanasia technicians in the shelter and for that reason, needs to be comfortable with their level of skill and performance. The shelter veterinarian is also in the best position to assess the competency of the technician. Because each trainee may have a different level of skill and experience, a uniform approach will not work for all. The regulation needs to give the veterinarian some flexibility to exercise their own discretion in assessing competency. The regulation will remain as written.

"In the opinion of the Office" is mentioned in 6.2 and also, for example - and it's throughout these Regulations. 5.1, it says that "...that is prepared to meet other standards which may be established by the Office." I think this is not clear and is vague and allows the Office to potentially not be uniform in how they administer certain parts of these regulations.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency reserves the right to define additional standards based on changing industry standards or continuing education needs of certified persons. The regulation will remain as written.

In 7.4 they describe disciplinary actions for the euthanasia technician, and it is very important to add besides "technical proficiency of euthanasia" the "determination of death." I think we've all heard too often that animals have been said to be euthanized and discovered the next day alive. So I think that would be very beneficial to add to 7.4.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 7.4 to read "Any concerns regarding the technical proficiency of euthanasia, the ability to accurately confirm death, professional behavior, or the handling of animals being euthanized of a certified euthanasia technician shall be directed to the Office immediately."

In 8.4, it talks about "shelter personnel with knowledge and training in animal health assessment." Well, who decides who has training in an animal health assessment? If I read two articles on the Web, does that allow me to have suitable knowledge of animal health assessment? Again, that's vague and not clear and allows different shelters to determine who will have knowledge and training of animal health assessment and different standards.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of 8.4 to read "Exam must be performed by a licensed veterinarian, veterinary technician, or shelter personnel with knowledge and training in animal health assessment under the direction of a veterinarian, veterinary technician or animal care manager."

10.1 describes something that I think is a little bit confusing. It describes the certified euthanasia technician is only permitted to perform euthanasia within the animal shelter of which they are employed. So what I'm confused about is: If a private person brings their animal to the shelter, does that imply that the euthanasia technician will be allowed to euthanize the privately-owned animal as well as the animals that are held within the shelter? And I believe the law is called Animals Held in a Shelter. So that's not clear to me.

Agency Response: The Agency appreciates and acknowledges these comments. The law, 16 Del. C. 30F, applies only to animals in custody of an animal shelter, not privately-owned animals. Therefore, a certified euthanasia technician would not ever be allowed to euthanize a privately-owned animal. The Agency is making a revision to 10.1 to read "... or a person certified by a licensed veterinarian as proficient to perform euthanasia (hereby referred to as certified euthanasia technician) after completion of the certification requirements in regulation 3.0. The certified euthanasia technician is only permitted to perform euthanasia on shelter animals within the animal shelter of which they are employed. No one other than the shelter or consulting veterinarian may perform euthanasia on privately owned animals."

10.2.3.8 not accessible to public when euthanasia is performed. I understand when these are animals held in shelter the public may not want to be there. However, there are instances where a private citizen may want a veterinarian or somebody else who's working in the clinic at one of these shelters to euthanize their animals and would want them to be there and present. I'm concerned that that would preclude the ability of the owner to be present.

Agency Response: The Agency appreciates and acknowledges these comments. As stated above, the law applies only to animals in custody of an animal shelter, not privately-owned animals. The regulation will remain as written.

10.2.4.2 talks about holding cages. I think this is in conflict with 11.9 where they describe "no animal shall be permitted to observe or hear the euthanasia of another animal." But why would you have holding cages in a room where you're going to euthanize animals? It conflicts in my mind.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in regulation 10.2.4.2, the cages are available "to hold an animal waiting for the pre-euthanasia anesthetic or euthanasia drug to take effect, if needed." The purpose is not so multiple animals can be in the room at the same time, and therefore, does not conflict with 11.9. To clarify, the Agency will revise 10.2.4.2 to read "Holding cages of the appropriate size available to hold an animal while waiting for a pre-euthanasia anesthetic or euthanasia drug to take effect, if needed, should be easily accessible in or near the room. These cages shall be maintained in a clean and sanitary condition. If these cages are in the euthanasia room, and occupied, no other animal may be euthanized at the same time pursuant to 11.9."

10.2.5 does not address how these drugs, specifically euthanasia drug, which is allowed in the law - pentobarbital will be stored. But, in addition, if you're going to include pre-euthanasia drugs or other chemical agents, I believe storage is imperative to be mentioned in some way.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 10.2.5 to read "All chemical agents, pre-euthanasia anesthetics and euthanasia drugs used in the euthanasia area shall be clearly labeled, logged and stored according to state and federal laws."

14.1. I just wonder why all the words of the law are repeated in the rules and regulations. I don't think this is necessary and it makes for just confusion to the general audience about the regulations. I think it's a total repeat of what's in the law in 14.1.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 14.1 includes some clarifying language that has been added to the law, 16 Del. C. §3007F. This language can be found in 14.1.6 and 14.1.7. When modifying a list, it is standard to include the whole list for context. The regulation will remain as written.

15.3. These penalties are very vague and very difficult for me to understand. But, specifically, I see no penalties for euthanasia technicians if they are performing euthanasia in an improper role and what would occur and what are the warning periods? Is there remediation? What goes on that way?

Agency Response: The Agency appreciates and acknowledges these comments. Penalties for violations of the 16 Del. C. 30F are detailed in 16 Del. C. §107(a). Regulation 15.3.1 further describes the range of corrective actions that may be ordered for violations, and will be determined by the Office depending on the specific situation. As stated in 7.3, certified euthanasia technicians may have their certificate revoked by the Office. In addition, 16 Del. C. §3006F describes any violation of euthanasia method and procedure, 16 Del. C. §3004F(d) constitutes a class A misdemeanor and shall be punishable as provided by law. The regulation will remain as written.

15.2.3. It talks about a final written report will be posted on the department website at the conclusion of the proceedings. I guess, again, this comes back to the definition of "complaints" of actual of nuisance complaints versus the volume versus where is this department website? How will this all be followed up? So that was very vague in my mind.

Agency Response: The Agency appreciates and acknowledges these comments. Any citizen may come forth with a complaint concerning alleged violations of this subchapter. The Office of Animal Welfare's law enforcement professionals will analyze each complaint to determine if it falls within the scope of authority of the Office of Animal Welfare and if there is probable cause to launch an investigation. Not all complaints are posted online, only those where violations are found. The regulation will remain as written.

Bryce Hurd, Sue Martell, Tacia McIlvaine, Araina Sala, Jackie Figart

Several public comments were received regarding the use of intracardiac injection (IC) as a method of euthanasia in animal shelters. In summary, these individuals believe IC to be a painful method of euthanasia and as such, should not be permitted in animal shelters.

Agency Response: The Agency appreciates and acknowledges these comments. As stated in Section 11.1.3, intracardiac injection is only to be used as a last resort when intravenous or intraperitoneal cannot be successfully administered due to animal's physical condition, and it is only to be administered by a veterinarian. Further, the regulation states that intracardiac (IC) injection may only be performed on a deeply anesthetized or unconscious animal so the animal is unable to feel pain. IC is currently an acceptable method of euthanasia listed in the most

current edition of AMVA Guidelines (2013), pages 27-28. In certain cases, a veterinarian will need to deem the most appropriate and most humane method, and should have the discretion to make that judgment based on the situation. The regulation will remain as written.

Roberta A. Jackson, VMD, President, Delaware State Board of Veterinary Medicine

Our board had the opportunity to review your draft of the euthanasia technician proposed legislation and offer the following comments/suggestions below. I welcome the chance to discuss the matter further at our mutual convenience, should you feel it necessary.

1. We take issue with the term "certified euthanasia technician". Licensed Veterinary Technicians in our state have completed extensive training, taken a rigorous licensing examination, pay a licensing fee, and fulfill 6 hours of yearly continuing education requirements. We find it offensive to the LVT in our state that have worked so hard to be recognized in the state to share the term technician with the people completing your proposed training regimen. We would like to suggest the term be replaced with "certified euthanasia specialist".

Agency Response: The Agency appreciates and acknowledges these comments. Although we recognize and understand the case for using an alternative title, the term "certified euthanasia technician" is currently in the Delaware Shelter Standard Law and to change that term would require an amendment to the law. The term "certified euthanasia technician" is the industry-recognized term in animal sheltering to identify shelter personnel, who are not veterinarians, that have received specific training in performing euthanasia in animal shelters. We consulted many other states' regulations and national animal welfare organizations for reference and this term is used broadly. Therefore, the regulation will remain as written.

2. We take issue that the draft as written does not mention any type of fee for the certification of these individuals. We maintain if the individuals are serious enough in their chosen career to undergo training, they should be willing to pay a fee to offset the training and recertification and not draw funds away from the rabies' surcharge designed intent of low cost spays and neuters.

Agency Response: The Agency appreciates and acknowledges these comments. To clarify, no money is being taken from the state spay/neuter fund to cover training costs. The shelters will be responsible for ensuring that anyone who is not a licensed veterinarian, nationally certified euthanasia technician, or licensed veterinary technician performing euthanasia in their facility on shelter animals will be trained and certified. Any cost associated with meeting that requirement will be the obligation of the shelter or the employee and may vary depending on where the training is obtained. However, to assist the animal shelters with compliance in the initial year, training is being provided at no cost to the shelters by the Office of Animal Welfare in spring 2015. The regulation will remain as written.

3. We propose licensed veterinary technicians also be required to complete the training referenced in Section 4.0 for the certified euthanasia "technician". We especially value the training they would receive in regard to stress management as it relates to this particularly grueling area.

Agency Response: The Agency appreciates and acknowledges these comments. The law does not require additional training for licensed veterinary technicians, so requiring it in regulations would contradict the law. We will, however, strongly encourage the training for any licensed veterinary technicians working in animal shelters that will be performing euthanasia of shelter animals. The regulation will remain as written.

4. We propose that Section 4.2.3 add the following language: "...as well as review federal and state laws regulating the storage and accountability of euthanasia and other controlled substances."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 4.2.3 to read "Proper dose calculation and record keeping, proper storage, handling and disposal of pre-euthanasia anesthetics and euthanasia drugs in accordance with state and federal laws."

5. We question the humanity of intracardiac and intraperitoneal injections without a clause requiring sedation of the animal first. We don't believe that intracardiac injection is an acceptable method of euthanasia based on the current AVMA guidelines. Or are there different rules surrounding humane euthanasia of non-owned pets that we may be unaware of?

Agency Response: The Agency appreciates and acknowledges these comments. As stated in Section 11.1.3, intracardiac injection is only to be used as a last resort when intravenous or intraperitoneal cannot be successfully administered due to animal's physical condition, and it is only to be administered by a veterinarian. Further, the regulation states that intracardiac (IC) injection may only be performed on a deeply anesthetized or unconscious animal so the animal is unable to feel pain. IC is currently an acceptable method of euthanasia listed in the most current edition of AMVA Guidelines (2013), pages 27-28. In certain cases, a veterinarian will need to deem the

most appropriate and most humane method, and should have the discretion to make that judgment based on the situation. The regulation will remain as written.

6. We propose Section 6.3 and 6.4 be changed to five days.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise 6.3 and 6.4 to five business days.

7. We propose Section 7.0 include a clause that applicants must receive a total of 6 hours continuing education in order to renew certification, specifically addressing compassion fatigue.

Agency Response: The Agency appreciates and acknowledges these comments. Compassion fatigue training is included in the initial certification training. The Agency agrees that continuing education involving compassion fatigue would be valuable for euthanasia technicians and all animal shelter staff, however, such training is not readily available. Due to the uncertainty of availability and cost of training, we cannot make it a requirement, only a recommendation. The Agency will work to identify compassion fatigue training opportunities or resource materials for shelter staff as they become available. The regulation will remain as written.

Tacia McIlvaine

I was disheartened to read several of the proposed regulations put forth to the public for consideration in regards to animals held in shelter.

Intracardiac injection by hypodermic needle may be performed only by a licensed veterinarian and only when performed on a deeply anesthetized animal to whom intravenous or intraperitoneal cannot be successfully administered due to animal's temperament or physical condition." If the animal is already anesthetized, there is no need, nor excuse for using the heart stick on an animal for temperament.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 11.1.3 to remove the word "temperament".

The fact that all Delaware shelters euthanasia policy manuals and procedures, as mandated by Delaware Code, were not presented to the public by the Office of Animal Welfare to consider for this public comment period, to me, is lackadaisical. The fact that the proposed regulations put forth by the Office of Animal Welfare reads very similar to the proposed regulations submitted by the Delaware Department of Agriculture in 2013 (16 **DE Reg.** 1023 04-01-13), seems very disingenuous. Not to mention very disrespectful of the legislators and citizens who worked to create this office to protect Delaware's companion animals that have the misfortune of ending up in the shelter system. I respectfully request that the Delaware Office of Animal Welfare remove any new euthanasia protocols not already specified in Delaware Code until such time as the contracted dog control/animal cruelty agencies have demonstrated a complete and total adherence to Delaware laws already in place. I also respectfully request that the OAW go back to the "drawing board" and redo this entire process. Copying and pasting previously submitted regulations is unacceptable. And thoughtless.

Agency Response: The Agency appreciates and acknowledges these comments. Delaware law requires that any animal shelter performing euthanasia shall have a current policy and procedure manual and that it shall be made available to OAW upon request. However, Delaware law does not require the OAW to share the manuals with the public. 16 **Del.C.** §3004F(d)(1) mandates that regulations shall be promulgated by the Department regarding acceptable methods of euthanasia in animal shelters. 16 **Del.C.** §3004F(d)(4) mandates that training and certification requirements for euthanasia technicians shall be established by the Department. These regulations satisfy both mandates. The Office of Animal Welfare reviewed previously-submitted public comments to the Department of Agriculture in drafting these regulations and consulted with the Delaware Board of Veterinary Medicine. The Office also initiated a contract with a veterinary consultant to draft regulations in alignment with AVMA guidelines and industry standards. The regulation will remain as written.

Janet Mitchell, VMD, President, Delaware Veterinary Medical Association

The Board of the Delaware Veterinary Medical Association has had an opportunity to review and discuss the proposed Regulations for Animals Held in Shelters. We appreciate the thoroughness and detail of this document. In general we are supportive of the materials as written. We do have a few comments for your consideration.

1. Regarding section 11.4 we recommend that it read "Large animal species shall or must be euthanized by a licensed veterinarian....."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise

regulation 11.4 to read "Large animal species shall be euthanized by a licensed veterinarian proficient with the handling of horses and livestock."

2. Regarding Section 8.4 we have concern with the term shelter personnel serving in the capacity to make health assessments. We would recommend limiting this to veterinarians and veterinary technicians/medical assistants.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of regulation 8.4 to read "Exam must be performed by a licensed veterinarian, veterinary technician, or shelter personnel with knowledge and training in animal health assessment under the direction of a veterinarian, veterinary technician or animal care manager."

3. Should the term "companion animal" be defined?

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second paragraph of regulation 1.0 to remove the word "companion".

Jane Pierantozzi, Executive Director, and Bob Wasserbach, President, Faithful Friends Animal Society

Faithful Friends Animal Society is generally in favor of state regulations that support Delaware's shelter standards laws and ensure the protection and care of companion animals while held in shelter. We are pleased to have reviewed the Office of Animal Welfare's proposed shelter regulations, pursuant to Title 16 of **Delaware Code**, §§ 3004F and 3008F.

We take note that the regulations are specific to §3004F(d) "Euthanasia method and procedure" but feel that 3004F(a), (b) and (c) must also logically be addressed as they pertain to euthanasia in animal shelters, for which we have concerns. We respectfully submit our written comments pertaining to *Regulations for Animals Held in Shelter*.

2.0: We ask that the terms "Severely aggressive" (to mean posing an imminent danger to staff) and "Aggressive" (to mean exhibiting defensive but trainable behaviors, such as food/treat guarding or aggression toward other animals) be added to the list of definitions to distinguish the levels of aggression since these terms influence outcomes for animals held in shelter.

Agency Response: The Agency appreciates and acknowledges these comments. The term "severely aggressive" is not used in the regulations and therefore cannot be included in the definitions. The term "aggressive" is only used once in regulation 11.2 and is not used in a manner where severity of aggressiveness is relevant. Therefore, the regulation will remain as written.

5.1: We are concerned that there will be lack of consistency in euthanasia training, and therefore a range of quality of training, if each shelter is allowed to develop an in-house training program. Regulation 5.1 seems to grant the authority to do so. How could the Office of Animal Welfare possibly monitor a shelter's in-house training to assure quality of training and to ensure that practical training criteria are met satisfactorily?

Agency Response: The Agency appreciates and acknowledges these comments. This provision is included to allow the Office of Animal Welfare to certify existing training courses, such as those offered in other states, which meet the standards established in regulation 5.0. The Agency will revise regulation 5.1 to read "Any organization or institution desiring to conduct a euthanasia technician certification education program shall apply to the Office of Animal Welfare and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying euthanasia technicians and that it is prepared to meet other standards which may be established by the Office. The organization or institution may not be an animal shelter in Delaware."

7.4: Will OAW have a policy for handling whistle-blower complaints about improper or unprofessional behavior with regard to euthanizing animals?

Agency Response: The Agency appreciates and acknowledges these comments. Any citizen may come forth with a complaint concerning alleged violations of this subchapter. The Office of Animal Welfare's law enforcement professionals will analyze each complaint to determine if it falls within the scope of authority of the Office of Animal Welfare and if there is probable cause to launch an investigation. The Office has policies and procedures for processing complaints. All investigative reports are confidential, and we protect the privacy of persons who report complaints to our Office.

8.4: We are concerned with the vagueness of the language "shelter personnel with knowledge and training in animal health assessment" in that there should be specificity on the knowledge and training required. Certainly a person with veterinary training would presumably be able to assess an animal's

health adequately, as would a person with animal behavioral training to be able to assess temperament and behavioral issues. Persons without such skills should be assessing neither health nor temperament. We know that some shelters, including FSAC-SPCA, routinely use a boxed "temperament test" to make life-or-death decisions about animals rather than for behavioral modification training, for which the tests were intended; FSAC's rate of euthanasia of dogs "due to aggression" is disproportionately high (30 to 43%). We are concerned about animals being unfairly labeled "severely aggressive" and euthanized before the 72-hour (or 5-day) holding period. We ask that some guidelines be developed for employing such tests by laypersons to assess temperament and that the terms "severely aggressive" and "aggressive behaviors" be distinguished from one another.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise the second sentence of 8.4 to read "Exam must be performed by a licensed veterinarian, veterinary technician, or shelter personnel with knowledge and training in animal health assessment under the direction of a veterinarian, veterinary technician or animal care manager." Regarding euthanasia decisions based on aggression, 16 **Del.C.** §3002F(a) states that animal evaluation and testing protocols for newly impounded animals are to be developed with a licensed veterinarian. Additionally, 16 **Del.C.** §3004F(c) states that the decision to euthanize an animal immediately to "protect shelter staff and/or other sheltered animals from an animal's severe aggression" shall be made by a licensed veterinarian.

9.0: Animal Adoption, Recovery and Rehabilitation, fails to address 3004F (a) and (b) that require animal shelters to meet certain conditions before an animal is euthanized, including transferring to another shelter or a rescue group and maintaining a rescue registry, per 3003F(d). We believe that it would be beneficial to Delaware citizens to have access to a publicly posted, state-maintained rescue registry so they know who to contact for help rescuing an animal. A state-maintained rescue registry would also maintain fairness by eliminating discriminatory practices by some shelters that result in fewer animals being saved. There should be valid reasons why any rescue would be removed from such a list, such as loss of nonprofit status or business license, committing fraud, or animal cruelty, for example. If the state is unable to maintain a statewide rescue registry, it should require that each shelter make its rescue registry available to OAW upon request.

Agency Response: The Agency appreciates and acknowledges these comments. The law mandates that animal shelters shall establish and maintain a registry of organizations willing to accept animals for the purpose of adoption or long-term placement, but it does not specify that shelters must work with every rescue group. As rescues are not currently regulated or evaluated by the state or an independent overseer, it is up to the animal shelter to determine which rescues to which they will transfer animals and the criteria they use in evaluating those rescues. So long as the shelters establish and maintain a rescue registry that includes various rescues, including breed specific rescues, they have met the requirements of the law. With regard to shelters making rescue registries available to OAW, Delaware law, 16 **Del.C.** §3008F(d), states that "Upon request of the Department, animal shelters shall make available records concerning the requirements of this subchapter." Therefore, the regulations will remain as written.

9.1: We strongly recommend the state invest in a publicly accessible, single online repository for shelters to post identifying information about stray animals in shelter so Delaware pet owners have just one online place to look for lost pets. It's too difficult for owners to relocate lost pets using the current, seriously fragmented, animal control system, and a single online portal could vastly improve our state's pitifully low return-to-owner rate.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 9.1 requires all animal shelters to post stray animals on their website within 24 hours of intake. The purpose of this provision is to aid in the recovery of lost pets by owners searching for them.

10.2.3.8: We believe the euthanasia room should be accessible to a pet owner who is requesting euthanasia so that an owner can remain with his/her pet at the very end of its life until it takes its last breath. This should not be denied to a grieving pet owner.

Agency Response: The Agency appreciates and acknowledges these comments. These regulations apply only to Animals Held in Shelter, 16 **Del.C.** Chapter 30F. Therefore, regulation 10.2.3.8 only applies to animals in custody of an animal shelter, not privately-owned animals. If an animal shelter provides euthanasia services for public animals, this procedure may only be performed by a Delaware licensed veterinarian pursuant to 23 **Del.C.**

Chapter 33. The regulation will remain as written.

11.6: We ask that this step be documented in the animal's record, along with the authorization required in 11.7.

Agency Response: The Agency appreciates and acknowledges these comments. The Department has the authority to request protocols and documentation concerning this regulation. The regulation will remain as written.

11.7: There should be documentation (e.g., signed checklist) to support that the shelter did indeed exhaust reasonable alternatives, per the conditions under 3004F(a) and (b), before it euthanized an animal.

Agency Response: The Agency appreciates and acknowledges these comments. The Department has the authority to request protocols and documentation concerning this regulation. The regulation will remain as written.

14.0: Recordkeeping: It is our understanding that shelters should be using the Asilomar format for standardized reporting of shelter statistics, including euthanasia. We believe this should be in the regulations and a shelter should not be allowed to create its own particular line/category that is not in the Asilomar Accords and that misrepresents its statistics, for example, by including animals that are not actually held at the shelter (e.g., an animal brought in by a member of the public for a spay or neuter). This apparently relates to the intake rate in the regulations.

Agency Response: The Agency appreciates and acknowledges these comments. Current law does not mirror the requirements of the Asilomar Accords. However, Regulation 14.0 serves to clarify reporting requirements which will result in uniform data reporting from all animal shelters. In addition, definitions for adoption, euthanasia rate, and intake rate are included in regulation 2.0 to eliminate confusion and inconsistency in reporting. Therefore, the regulation will remain as written.

14.1.9, 14.1.10 & 14.3: We ask that copies of any and all records of examination notes, vaccinations, and medical treatment, as well as health history if known, travel with the animal when that animal is adopted or transferred to another shelter or rescue organization. This will help remove some of the mystery surrounding each animal's health and prevent over-vaccinating the animal.

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will add regulation 14.6 to read "A medical history to include examinations, vaccinations, and all medical treatment shall be provided in written form with the animal at the time of adoption or transfer."

14.3: We ask that OAW specify that records should be easily accessible. When the New Castle County (NCC) Auditor's Office engaged a contractual auditor to audit Kent County SPCA's (now FSAC-SPCA's) compliance with the NCC contract, the auditor's report stated, "As noted elsewhere in the report, Audit had great difficulty retrieving and assessing information on these elements. Some of the records on euthanasia test items could not be located. Many of those that were retrieved were pulled from folders that were in boxes in no obvious order."

Agency Response: The Agency appreciates and acknowledges these comments. 16 Del.C. §3008F(d) states, "Upon request of the Department, animal shelters shall make available records concerning the requirements of this subchapter." The regulations will remain as written.

15.3: We realize that the OAW does not have authority under the current law to issue more severe sanctions for noncompliance than what 16 Del.C. §107(a) allows. We hope that the OAW will work the State Legislature to have harsher penalties for severe violations of the law.

Agency Response: The Agency appreciates and acknowledges these comments.

15.1.2: We don't understand why an inspection would just be looking at compliance with 16 Del.C. Section 3008F. We believe the inspection should encompass the whole of Chapter 30F, "Animals Held in Shelter." We ask that it be edited to read, "...compliance with or violations of 16 Del.C. Chapter 30F or of these regulations for animals held in shelter."

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will edit the first sentence of regulation 15.1.2 to read, "... compliance with or violations of 16 Del.C. Ch. 30F."

Cathy Samardza (comments made at public hearing not covered in Ms. Samardza's written comments)

Certifications do cost money. In most other states, it's the responsibility of the euthanasia technician to pay for those certifications and the registration and for the training. I agree they cost money. I don't agree that that's a

problem except that there is no mention of registration fees in there at all.

Agency Response: The Agency appreciates and acknowledges these comments. The shelters will be responsible for ensuring that anyone who is not a licensed veterinarian, nationally certified euthanasia technician, or licensed veterinary technician performing euthanasia in their facility on shelter animals will be trained and certified. Any cost associated with meeting that requirement will be the obligation of the shelter or the employee and may vary depending on where the training is obtained. However, to assist the animal shelters with compliance in the initial year, training is being provided at no cost to the shelters by the Office of Animal Welfare in spring 2015. The regulation will remain as written.

Velvet Sponaugle

Although I am now a private citizen, I have extensive euthanasia experience as well as veterinary technician experience. I graduated from the University of Delaware in 1971 with as BS in Agricultural Science and a minor in Veterinary Medicine. I started working at the Kent County SPCA in the seventies. My duties included the complete care of the adult dog kennels as well as euthanasia. When the SPCA acquired responsibility for Animal Cruelty investigations, I became the first Animal Cruelty Officer. I took several law enforcement courses. After I left the SPCA, I continued my career as a Veterinary Technician for the next 40 years. With this background, I can make some observations regarding the Office of Animal Welfare Proposal.

3-1 There is no such classification as Nationally Certified Euthanasia Technician. There are courses provided by national organizations such as the American Humane Association. But; there are no nationally certified Euthanasia Technicians; there are only state certified Euthanasia Technicians. A licensed Veterinary Technician has no training in euthanasia. This is not covered in the courses offered in the curriculum. To my knowledge, Veterinary Technicians are not permitted to perform euthanasia in any state. A licensed Veterinary Technician should be required to take the extra courses to acquire the certification in euthanasia procedures, not be automatically excused from the requirements of Euthanasia Technician. Sections 3-5 as well as 10.1 also mentions these classifications

Agency Response: The Agency appreciates and acknowledges these comments. The law does not require additional training for licensed veterinary technicians, so requiring it in regulations would contradict the law. We will, however, strongly encourage the training for any licensed veterinary technicians working in animal shelters that will be performing euthanasia of shelter animals. The regulation will remain as written.

7.3 The pertinent line - the Office of Animal Welfare "may" revoke their certification should be "shall revoke".

Agency Response: The Agency appreciates and acknowledges these comments. The Agency will revise regulation 7.3 to change "may" to "shall".

11.8 No animal shall be left unattended between the time of euthanasia procedures are first begun and the verification of death. 13.3.3 Onset of rigor mortis - This happens over a period of 2 to 6 hours. 11.8 and 13.3.3 these two sections provide unintended problems. Unless you intend that the Euthanasia person to be tied up for several hours this section "13.3.3" needs to be struck.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 13.0 applies to any animal that dies in a shelter, not only animals that were euthanized. Rigor mortis is a definitive method for verification of death and would be a sufficient way to confirm death if an animal dies in a shelter of natural causes. As such, rigor mortis should remain in this section. To clarify, rigor mortis is one way that shelters may confirm death, it is not a requirement. They may instead verify by using stethoscope or by cardiac stick syringe. Therefore, the regulation will remain as written.

Kevin Usilton, Executive Director, First State Animal Center and SPCA

I am submitting written testimony in opposition of the animal shelter standards that were written and presented for discussion on February 2015. These standards are lacking clarification in some areas and are overstepping the bounds of oversight in other areas.

If these standards are so important for animal shelters, what about the hundreds of animals sitting in our rescue agencies? These agencies should be subject to the same level of oversight as a brick and mortar shelter.

Agency Response: The Agency appreciates and acknowledges these comments. At this time, the law only

applies to animal shelters and therefore, these regulations cannot apply to entities that do not fall under that description. The definition of "animal shelter" can be found in regulation 2.0 Definitions.

Minimum standards of care and treatment: This is an area which is lacking in clarification from Title 16. The intentions of shelter standards should be to set standards for minimum levels of care for animal. As such, there are no standards, for the five freedoms of animal welfare as published by the Animal Welfare Council in 2009. These five freedoms are freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury, or disease, freedom to express normal behavior, and freedom from fear and distress.

Agency Response: The Agency appreciates and acknowledges these comments. Regulation 8.0 - 8.4 provides clarity for the provisions of the law that address shelter care and treatment, specifically 16 **Del.C.** §3002F. To make further changes would involve an amendment of the law, which is outside the statutory authority given to the Agency.

Certification and training for euthanasia technicians, acceptable standards, methods, and procedure for euthanasia: This area is overstepping the bounds of oversight. We already have acceptable standards for euthanasia in Title 16; and the American Veterinary Medical Association has guidelines on euthanasia standards already published. These new regulations are requiring renewed training and certification of euthanasia technicians which does not raise the level of professional expertise, just makes additional administrative duties. Since our euthanasia is based on dog control and cruelty investigations, we will require our contracts for these services to supply the necessary resources to meet the new demand.

Agency Response: The Agency appreciates and acknowledges these comments. 16 **Del.C.** §3004F(d)(1) mandates that regulations shall be promulgated by the Department regarding acceptable methods of euthanasia in animal shelters. 16 **Del.C.** §3004F(d)(4) mandates that training and certification requirements for euthanasia technicians shall be established by the Department. These regulations satisfy both mandates. Should the animal shelter management decide that euthanasia be administered by a person who is not a licensed veterinarian, nationally certified euthanasia technician, or licensed veterinary technician, regulations 3.0-7.0 apply. The regulation will remain as written.

Animal adoption, recovery, and rehabilitation: Where are the requirements for adoption? Missing is a key aspect of shelter/rescue operations. Many of our states animals languish in cages in shelters and rescues for one, two, three years. All adopted animals must be spayed/neutered, vaccinated, and microchipped prior to adoption paperwork being finalized. All microchips should be registered with a national company to ensure ease of returning lost pets should the pet become lost. Animal agencies should make every attempt to offer most available hours for adoption, is an example of overreach of authority. Nonprofit's donors and supporters will set the mission based programs to meet the needs of the community, it should not be oversight from a state agency.

Agency Response: The Agency appreciates and acknowledges these comments. Delaware law requires that animals must be spayed or neutered prior to adoption, and that they be vaccinated against specific diseases. It does not mandate that adopted animals be microchipped. The requirement that shelters be open to the public after normal business hours, including evening and weekends, is for the purpose of increasing opportunities for people to reclaim lost pets and to create increased opportunities for adoption. The specific hours of operation, as well as adoption policies and procedures are left to the individual shelters to define. Therefore, the regulation will remain as written.

All found pets should be reported to the appropriate animal control agency as a found animal to be recorded in the lost and found registry. All found pets should be listed on a website to allow the lost owners visual identification to find their pet. All lost pets should also be reported to the appropriate animal control agency to be recorded in the lost and found registry. The lost and found registry should be update at least monthly, to ensure accurate information is on file.

Agency Response: The Agency appreciates and acknowledges these comments. According to 16 **Del.C.** §3003F(c)(2) and regulation 9.1, each animal shelter is already required to post found animals on their website within 24 hours of taking custody of that animal. Additionally, 9 **Del.C.** §910(c) already requires a person report a found dog to the appropriate agency within 48 hours of finding that dog. The regulation will remain as written.

Procedures for inspections and complaints: Processes for inspections and complaints, are not clearly defined. What constitutes a complaint? Is probable cause required? Is the complaint a witnessed event by the RP? Is it something they read on line? Is there recourse for unfounded complaints? Are their civil judgments against false harassing complaints?

Agency Response: The Agency appreciates and acknowledges these comments. Any citizen may come forth with a complaint concerning alleged violations of this subchapter. The Office of Animal Welfare's law enforcement professionals will analyze each complaint to determine if it falls within the scope of authority of the Office of Animal Welfare and if there is probable cause to launch an investigation. The Office has policies and procedures for processing complaints. All investigative reports are confidential, and we protect the privacy of persons who report complaints to our Office. The regulation will remain as written.

Record keeping obligations: Record keeping for every animal, every detail of that animal, and every disposition of that animal and of course proof that every detail occurred to every animal is a mountainous administrative task for our large intake shelter. We utilize a shelter software program to track every detail of the animals which come to us for a safe place while temporarily homeless. As with any software program, there are limitations to the reports available, and these additional administrative requirements will again require additional resources. By adding additional reporting of 14.2 thru 14.5 how will these requirements help animals located in shelters?

Agency Response: The Agency appreciates and acknowledges these comments. Accurate records and data are essential for monitoring the health of the animals and ensuring basic standards of care. Documenting correct origins, descriptions and location of animals also plays an important role in reunification of lost pets with owners. Lastly, records are necessary to verify adherence to law. The records detailed in this regulation follow the recommendations outlined in the Association of Shelter Veterinarians Guidelines for Standards of Care in Animal Shelters, recognized as industry best practices. They are also similar to other states' requirements for record keeping by animal shelters. Documentation does not need to be computerized, but it does need to be legible. Sample forms are widely available for shelter professionals from organizations such as Maddie's Shelter Medicine Program at the University of Florida's website. The regulation will remain as written.

**Sherri Warburton, Director of Animal Control
Delaware Animal Care and Control and First State Animal Center and SPCA**

Definitions within this policy must be defined using the most concrete definitions. In this proposal in Section 2.0, Definitions, some must be expanded. Examples such as the term "euthanasia" shouldn't mirror accepted terminology used by veterinarians and animal welfare workers. The proposed definition of "euthanasia as an act of inducing a painless death" is vague and nondefining. In 2010 the Association of Shelter Veterinarians published Guidelines for Standards of Care in Animal Shelters. The Guidelines define euthanasia as "to cause the death of an animal using humane techniques...humane euthanasia is accomplished by an intravenous or intraperitoneal injection of a solution of sodium pentobarbital."

Agency Response: The Agency appreciates and acknowledges these comments. The definition for euthanasia will remain as written. The methods by which euthanasia may be performed are outlined in Regulation 11.0.

The term "intake" is exclusionary. The Guidelines define "intake" as "the point of admittance of animals into a shelter." That's a more concrete definition and covers all intakes, including dead on arrivals or in-for-testing animals, which technically would be excluded from your definition.

Agency Response: The Agency appreciates and acknowledges these comments. The regulations in question concern animals held in shelter only, not privately-owned animals. Animals who are dead on arrival or who are privately owned patients receiving spay/neuter surgeries or veterinary care should not be included in data reflecting the shelter intake population. The proposed definition of "intake" is intended to ensure uniform data reporting representing live animals admitted to the shelter's possession and their disposition, as recommended by the Asilomar Accords and National Humane Federation. The Agency will revise the definition of "Intake rate" in 2.0 to read "means the number of live animals for which an animal shelter assumes custody and are admitted for temporary shelter and care. This shall include animals admitted to the shelter, foster care, or a satellite location."

And let's also look at what is absent from the definitions. Section 15.0, Inspections of Complaints of Animal Shelters. Missing from the definitions is defining what a "complaint" is. The most basic definition of a "complaint" is a "grievance." In the broadest spirit of defining a complaint, a tort must be committed that constitutes an offense that must be supported by probable cause. With the volatile nature of social media, are complaints going to be accepted by social media by the Office of Animal Welfare or must there be firsthand knowledge? The basis of what constitutes a complaint should be defined in 2.0.

Agency Response: The Agency appreciates and acknowledges these comments. Any citizen may come forth with a complaint concerning alleged violations of this subchapter. The Office of Animal Welfare's law enforcement professionals will analyze each complaint to determine if it falls within the scope of authority of the Office of Animal Welfare and if there is probable cause to launch an investigation. The regulation will remain as written.

In closer examination of Section 15.0, I found it odd that only violations are mentioned and there's no mention of a definition of a warning. 15.3.1 states "The Department shall have the power to issue orders to correct deficiencies and to impose penalties pursuant to **Delaware Code** Title 16, Section 107(a)." Question: Who sets the defined penalty between not less than \$100 or more than \$1,000? The referenced statute also states that "All fines and penalties assessed by the Department under this statute shall be retained by the Department in order to defray costs associated with the lead-based paint poisoning prevention program." After reading the entire penalty section, it appears the penalties statute is written for violations of the lead-based paint program and has nothing to do with animal welfare.

Agency Response: The Agency appreciates and acknowledges these comments. To clarify, the only statute referenced for penalties is 16 **Del.C.** §107(a) which applies to anyone who fails to comply with the regulations adopted by the Department. Lead-based paint penalties are described in 16 **Del.C.** §107(d) and are not referenced in the regulations. The amount assessed for penalties will be determined by the Department and will be based on the type and severity of violation.

Policy 15.3.1 states "Violations must be corrected within a time frame established by the Department." This language is vague and, at the very least, should define the minimum correction time for an organization. Compare that to **Delaware Code** Title 9, Subsection 0903(c) for kennels which reads "If, upon inspection or investigation, the premises or facilities are found not to satisfy the requirements for the humane handling and care and treatment of dogs specified in Subsection 904 of this title, the operator of premises or facilities shall be issued a warning identifying the deficiencies. Such operator shall have a minimum of ten business days to bring the premises or facility into compliance with Section 904 of this title."

Agency Response: The Agency appreciates and acknowledges these comments. The timeframe for correction will be determined as appropriate to the specific situation and the type and severity of the violation. Ten days, for instance, would not be appropriate where the health and welfare of animals is in imminent danger. Therefore, the regulation will remain as written.

Lastly, there is no mention of actions involving the state veterinarian who still has a poultry and animal division. Since there's no full-time veterinarian on staff with the Office of Animal Welfare, it's alarming that veterinarian expertise in both writing policy and defining violations such as this Title 16 Animals Held in Shelters is absent.

Agency Response: The Agency appreciates and acknowledges these comments. The State Veterinarian has authority within Title 3, Agriculture, and the Shelter Standards Law is under Title 16, Health and Safety. The Office worked in consult with a Delaware licensed veterinarian in drafting these regulations.

The public comment period was open February 1, 2015 through March 10, 2015. Minor amendments were made to the proposed regulations based on public comment; these amendments are not substantive in nature. The regulations have been reviewed by the Delaware Attorney General's office and approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Minor amendments were made to the proposed regulations based on public comment; these amendments are not substantive in nature. Additionally, some grammatical amendments were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best

interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations for Animals Held in Shelter are adopted and shall become effective May 11, 2015, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

4501 Regulations For Animals Held in Shelter

DEPARTMENT OF JUSTICE
VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL
Statutory Authority: 11 Delaware Code, Section 9004 (11 Del.C. §9004)

ORDER

302 Bylaws Governing the Victims' Compensation Assistance Program Advisory Council

The Victims' Compensation Assistance Program's Advisory Council of the State of Delaware has adopted the final Bylaws, State of Delaware, Victims' Compensation Assistance Program, Advisory Council, attached hereto. The Bylaws will govern the actions of the Advisory Council.

Decision of the Advisory Council

The Victims' Compensation Assistance Program Advisory Council reviewed the proposed Bylaws over the course of several meetings and authorized the final draft at the meeting held on April 14, 2015.

Statutory Basis or Legal Authority to Act:

Title 11 Delaware Code, Chapter 90, Section 9003. The Bylaws are being filed pursuant to Section 10113(b) of the Administrative Procedures Act.

Text of Rules Adopted

The final version of the Bylaws of the Advisory Council is attached hereto.

ADOPTED, the 14th day of April, 2015, by the members of the Victims' Compensation Program Advisory Council.

Lisa Ogden, Director

302 Bylaws Governing the Victims' Compensation Assistance Program Advisory Council
April 14, 2015

Article I
Advisory Council Authority and Purpose

- 1.1 Authority. The Victims' Compensation Assistance Program Advisory Council (hereinafter the "Advisory Council") exists by authority of Title 11 of the **Delaware Code**, Chapter 90, Sections 9003 and 9004, as amended.
- 1.2 Purpose. The General Assembly established the Advisory Council within the Department of Justice in order to advise and assist the Victim's Compensation Assistance Program and Appeals Board by providing the input and perspectives of members from a variety of backgrounds and experience in working with crime victims.

FINAL REGULATIONS

- 1.3 Function. The Advisory Council shall have the following functions, powers and duties:
- (a) to review and comment on such rules and regulations as are proposed by the Victims' Compensation Assistance Program ("VCAP");
 - (b) to serve in an advisory capacity to VCAP and the Appeals Board;
 - (c) to recommend the adoption, amendment, or rescission of rules, regulations and policies implementing Chapter 90 of Title 11 of the **Delaware Code**; and
 - (d) in its discretion to prepare an independent annual report describing the Advisory Council's activities.

Article II **Membership**

- 2.1 Composition. The Advisory Council shall consist of eleven total members, four sitting *ex officio*, and seven at-large members appointed by the Governor. The membership of the Advisory Council shall be as follows:

- (a) The Attorney General or the Attorney General's designee;
- (b) The Chair of the Victim's Rights Task Force or the Chair's designee;
- (c) The Chair of the Domestic Violence Task Force or the Chair's designee;
- (d) The Chair of the Sexual Assault Network of Delaware or the Chair's designee;
- (e) seven at-large members as follows:
 - (1) one member from the medical profession;
 - (2) one member from the mental health profession;
 - (3) one law-enforcement advocate working with a Delaware police agency;
 - (4) one member of the public residing in the City of Wilmington;
 - (5) one member of the public residing in New Castle County;
 - (6) one member of the public residing in Kent County; and
 - (7) one member of the public residing in Sussex County.

- 2.2 Term.

- (a) The terms of the at-large members appointed by the Governor shall be three years or until a new member is appointed by the Governor. Where an at-large member serves in a holdover capacity for beyond the three-year term, the term of the appointed successor member shall run from the end of the original three-year term.
- (b) The membership year shall begin upon the approval of the Governor of the at-large member's appointment.
- (c) At-large members may be reappointed for consecutive terms at the discretion of the Governor, without limitation on total service time.
- (d) An at-large member may resign or may be removed by the Governor at any time.
- (e) The Governor shall be notified that a vacancy of an at-large position has occurred within thirty days of the Advisory Council learning of such vacancy.
- (f) The Governor shall fill a vacancy of an at-large position on the Advisory Council within thirty days through the appointment of a qualified replacement.
- (g) In case of a vacancy on the Advisory Council before the expiration of member's term, a successor shall be appointed by the Governor to serve the remainder of the unexpired term.

- 2.3 Roles and Responsibilities of Advisory Council Members.

- (a) The Advisory Council shall monitor the balance in the State of Delaware Victims Compensation Fund through reports from the VCAP Director showing aggregate funds received and aggregate disbursements to victims and claimants.

- (b) The Advisory Council shall review the nature and volume of claims submitted to VCAP, with particular attention to areas or types of compensation that appear to be either inadequate or excessive.
- (c) The Advisory Council shall examine opportunities for VCAP to recover funds through restitution and reimbursement from collateral sources.
- (d) The Advisory Council shall work with VCAP in identifying caps and limits on categories of compensation that may be necessary to insure the solvency of the Victims' Compensation Fund.
- (e) The Advisory Council shall review and comment on proposed regulations prepared by VCAP prior to publication in the *Register of Regulations* and, in its discretion, on proposed regulations published in the *Register of Regulations*.
- (f) The Advisory Council shall solicit, review, and comment on VCAP statistical compilations, procedural manuals, and publications pertaining to VCAP operation.
- (g) The Advisory Council shall review and offer advice on the operation of the Appeals Board.
- (h) The Advisory Council shall engage in activities reasonably related to fulfillment of its functions compiled in §1.3 of the Bylaws.

Article III **Officers and Duties**

3.1 Officers.

- (a) The Officers of the Advisory Council shall consist of a Chair, a Vice Chair, and a Secretary.
- (b) The Advisory Council shall select a Chair for a one-year term by vote of a simple majority of members at a meeting where a quorum is present. The elected Chair shall be eligible for re-election for successive terms.
- (c) The Advisory Council shall elect members to serve as the Vice-Chair and Secretary for a one-year term by a simple majority vote of members at a meeting where a quorum is present. The elected Vice-Chair and the Secretary shall be eligible for election for successive terms.

3.2 Duties.

- (a) The Chair shall:
 - (1) preside over all meetings;
 - (2) establish committees, work groups, and task forces, and appoint members to chair such groups;
 - (3) serve as the liaison between the Advisory Council and both VCAP and the Appeals Board;
and
 - (4) perform such other duties as the Advisory Council may determine.
- (b) The Vice Chair shall:
 - (1) assume the duties of the Chair in his/her absence; and
 - (2) act as parliamentarian.
- (c) The Secretary shall be responsible for the timely preparation of accurate meeting minutes.

Article IV **Meetings**

4.1 Number of Meetings.

- (a) Meetings may be called by the Chair. The Advisory Council shall meet at least four times a year, and in such places as it deems necessary.
- (b) Meetings of committees, work groups, and task forces shall be scheduled with the approval of the Chair and due notice to all Advisory Council members.

FINAL REGULATIONS

- 4.2 Public Notice. All regular Advisory Council meetings shall be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; shall be open and accessible to the general public; and shall be held in accordance with the Delaware "Freedom of Information Act" (Title 29, Chapter 100 of the **Delaware Code**).
- 4.3 Quorum.
- (a) A quorum for any meetings of the full Advisory Council shall consist of 40% of the appointed members in attendance.
 - (b) A call for quorum may be made at the beginning of each regularly scheduled meeting and may be verified at any time during the meeting.
 - (c) A simple majority of the quorum may transact of any business of the Advisory Council.
- 4.4 Minutes.
- (a) Draft meeting minutes shall be compiled by the Secretary, or in the Secretary's discretion, by VCAP staff, consistent with §9005 of Title 11 of the **Delaware Code**.
 - (b) The minutes shall include a record of those members present and a record, by individual members, of each vote taken and action agreed upon.
 - (c) The Secretary shall authorize VCAP staff to electronically post draft minutes of meetings to the State of Delaware website within 20 working days of the meeting. Prior to being posted, draft minutes shall be distributed to members of the Advisory Council.
 - (d) Draft minutes may be revised and corrected until approved by the Advisory Council at its next meeting. The final approved minutes shall be posted on the State of Delaware website within five business days of approval.

Article V **Committees**

- 5.1 Committees.
- (a) Standing and special committees, work groups, and task forces may be appointed by the Chair as deemed necessary to carry on the work of the Advisory Council.
 - (b) The Chair shall be an ex-officio member of all committees.
- 5.2 Executive Committee.
- (a) The Advisory Council will maintain an Executive Committee of three members consisting of the Chair, Vice Chair, and Secretary.
 - (b) The Executive Committee may exercise all powers of the Advisory Council between meetings, exclusive of the power to amend the Bylaws.
 - (c) Written notice of all action taken by the Executive Committee shall be given to members no later than the next Council meeting.

Article VI **Conflict of Interest**

- 6.1 Conflict of Interest. No member of the Advisory Council may cast a vote on any matter that is likely to provide a direct financial benefit to that member, or to an organization or business in which that member has a financial or ownership interest, or with which that member has an employment relationship. No member shall otherwise give the appearance of a conflict of interest as defined more specifically under 29 **Delaware Code** Chapter 58, the "State Employees', Officers' and Officials' Code of Conduct", which is incorporated herein by reference thereto.
- 6.2 Consultation. Any member of the Advisory Council may seek guidance with respect to a potential conflict of interest, by disclosing the nature of the potential conflict, and seeking an advisory opinion from the Deputy Attorney General assigned to the Advisory Council.

Article VII General Provisions

- 7.1 Amendment of Bylaws. Bylaws may be amended by a two-thirds (2/3) majority of the members, voting at a meeting where a quorum is present. Proposed changes to the Bylaws shall be submitted in writing to the membership a minimum of thirty (30) days prior to the vote.
- 7.2 Robert's Rules of Order. Rules of precedence of motions and other parliamentary procedures not specified herein shall be governed by Robert's Rules of Order.
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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3500

Secretary's Order No.: 2015-F-0010

3500 Tidal Finfish

RE: Approving Final Regulations to Amend 7 DE Admin. Code §§3502-06, as follows, to wit:

- 3502 Striped Bass Spawning Season and Area Restrictions
- 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit
- 3504 Striped Bass Possession Size Limit; Exceptions
- 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements
- 3506 Striped Bass; Total Length Measurement

Date of Issuance: March 30, 2015

Effective Date of the Amendment: May 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §§3502-06, as follows, to wit: 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions*; 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*; and 7 DE Admin. Code 3506: *Striped Bass Total Length Measurement* (hereinafter referred to as "*Striped Bass regulations*"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-12 dated January 8, 2015. The Department published its initial proposed regulation Amendments in the February 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on February 23, 2015. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through March 10, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to these *Striped Bass regulations* ("Amendments") consistent with Addendum IV to Amendment 6 of the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Striped Bass. The proposed Amendments will accomplish a mandated 25% recreational fishery reduction by

adopting the parameters of Option CE1 for the 2015 striped bass season (as summarized below), provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses, clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and offer minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community.

Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass ("SSB") was well below the target SSB, and was approaching the overfished threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their striped bass harvest by 25%.

Delaware must comply with the ASMFC's changes to the Atlantic Striped Bass Fisheries Management Plan as approved in October 2014. While the striped bass stock is not currently overfished, the ASMFC requires a 25% reduction in fishing mortality in 2015 to avoid overfishing the declining spawning stock in the coming years.

The reduction of Delaware's striped bass harvest by 25% will be accomplished through a direct administrative adjustment to the annual commercial quota, and through adjustments, as necessary, to the season(s), minimum size and possession limit(s) for the recreational sector. Six management options, approved by ASMFC, were proposed by the Department in order to achieve the aforementioned required 25% reduction in Delaware's recreational harvest of this species.

While all six options are expected to achieve the required 25% reduction mandated by ASMFC, Option CE1 provides the most equitable access to the resource by anglers statewide, and has the least economic impact on the associated businesses (bait and tackle stores, for-hire vessels, etc.)" The summer slot season for the Delaware Bay, River and their tributaries, as provided for by Option CE1, targets resident male striped bass that are of minor importance to Delaware's spawning stock. In recent years, this harvest component has accounted for approximately one-third of Delaware's annual recreational striped bass landings, making it very important to Delaware River and Bay anglers and the associated businesses. Additionally, since Option CE1 was based on Delaware-specific data (as opposed to the other five options, which were developed using coastwide data), it provides greater opportunities for anglers to retain fish, while having the least impact on angling-dependent businesses. It should also be noted that Option CE1 was supported by the preponderance of public comment received.

The aforementioned proposed Amendments, along with the six management options approved by ASMFC, were presented and thoroughly vetted by the Department at the public hearing on February 23, 2015. Members of the public attended the February 23, 2015 hearing, and comment was received by the Department with regard to the six management options referenced above. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 24, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code §§3502-06: *Striped Bass* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) adopt provisions consistent with Addendum IV to Amendment 6 of the ASMFC's IFMP for Atlantic Striped Bass, which require states to reduce their coastal striped bass harvest by 25%; (2) accomplish said 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season; (3) provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses; (4) clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and (5) provide minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** §§3502-06, pursuant to 7 **Delaware Code**, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on February 23, 2015, and held the record open through close of business on March 10, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) adopt provisions consistent with Addendum IV to Amendment 6 of the ASMFC's IFMP for Atlantic Striped Bass, which require states to reduce their coastal striped bass harvest by 25%; (2) accomplish said 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season, as follows, to wit: anglers shall have the opportunity to harvest up to two striped bass per day *in any combination* that measure 28-37 inches or greater than 44 inches (excluding the Delaware Bay, River and its tributaries from July 1 through August 31). The same limits shall apply in the Delaware Bay, River and its tributaries, except during the period July 1 through August 31, during which time anglers may only take up to two striped bass from 20 – 25 inches. No harvest shall be permitted from the spawning grounds during the period of April 1 through May 31; (3) provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses; (4) clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and (5) provide minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "B" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** §§3502-06: *Striped Bass* regulations to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

FINAL REGULATIONS

Bass (Striped Bass; Black Sea Bass)

Option	Size Limit(s)	Possession Limit(s)	Open Season/Areas
B5	≥ 33 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B6	28–34 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B7	28–34 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 36 inches	1	
B8	28–36 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 38 inches	1	
B9	28–37 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 40 inches	1	
CE1	28–37 inches and ≥ 44 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31 and summer slot (*)
	*20–25 inches	2	

3502 Striped Bass Spawning Season and Area Restrictions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It ~~shall be~~ is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It ~~shall be~~ is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.
- 4.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a ~~draft~~ drift gill net of multi- or monofilament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.
- 5.0 It ~~shall be~~ is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- 6.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 and in the areas defined in 3502 section 2.0 with natural bait using any hook other than ~~3504~~ a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It ~~shall be~~ is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It ~~shall be~~ is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession ~~more than two (2) [[TBD from Table]~~ **more than two (2)]** striped bass per day (**a day being 24 hours**) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- 4.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to have in possession ~~more than two (2) [[TBD from Table]~~ **two (2)]** striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

3504 Striped Bass Possession Size Limit; Exceptions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession any striped bass ~~that measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20 inches and not greater than 26 inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August [[TBD from Table]~~ **that measures less than twenty-eight (28) inches in total length or any striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than twenty (20) inches and not greater than twenty-five (25) inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August].**
- 2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It ~~shall be~~ is unlawful for any person to possess a striped bass that measures ~~less than 28 inches [[TBD based on Table]~~ **less than 28 inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches],** total length, unless said striped bass is in one or more of the following categories:
 - 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or
 - 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
 - 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
 - 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped

bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It ~~shall be is~~ unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 It ~~shall be is~~ unlawful for any person to land any striped bass that measures ~~less than twenty-eight (28) inches in total length at any time~~ **less than twenty-eight (28) inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches, total length at any time**, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 7.0 It ~~shall be is~~ unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It ~~shall be is~~ unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It ~~shall be is~~ unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.
- 2.0 It ~~shall be is~~ unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by March 15.
- 3.0 It ~~shall be is~~ unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.
- 4.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by

the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the February 15 - May 31 gill net fishery, 10% of the State's commercial quota for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

- 5.0 It ~~shall be~~ is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.
- 6.0 It ~~shall be~~ is unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.
- 7.0 The Department ~~shall~~ may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.
- 8.0 It ~~shall be~~ is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.
- 9.0 It ~~shall be~~ is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.
- 10.0 It ~~shall be~~ is unlawful for ~~any commercial food fisherman~~ to apply a any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 11.0 It ~~shall be~~ is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.
- 12.0 The Department ~~shall~~ may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.
- 13.0 Each commercial food fisherman participating in a striped bass fishery shall file ~~an acceptable a~~ complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file ~~an acceptable a complete and accurate~~ report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

3506 Striped Bass; Total Length Measurement.

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 Unless otherwise authorized, it ~~shall be is~~ unlawful for any commercial fisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering for the purpose of retaining said striped bass in accordance with §3504.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 **Del.C.**, Ch. 60 and 63)
7 **DE Admin. Code** 1302

Secretary's Order No.: 2015-WH-0015

1302 Regulations Governing Hazardous Waste

Date of Issuance: April 14, 2015

Effective Date of the Amendment: May 21, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, and 7 **Del.C.** §6301 *et seq.*, and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 **DE Admin. Code** 1302, *Delaware Regulations Governing Hazardous Waste* (DRGHW). The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 **Del.C.** Chapter 101, and has commenced said process with Start Action Notice 2014-10 dated December 11, 2014. The Department published its initial proposed regulation Amendments in the February 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on February 26, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open for public comment through March 13, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to the existing DRGHW to enable the Department to provide greater environmental protection and to reduce human health risks. Specifically, the proposed action will allow DNREC to provide clarification to existing regulatory language, as noted above, and to adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015. Members of the public attended the aforementioned hearing, but no comment was received by the Department at that time with regard to this proposed regulatory promulgation. It should be noted that, prior to the aforementioned hearing, the U.S. Environmental Protection Agency ("EPA") formally advised DNREC that it had no concerns with this proposed regulatory promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Although the record remained open through March 13, 2015, no additional comment was ever received by the Department concerning this proposed action. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 2, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 1302: *Delaware Regulations Governing Hazardous Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to provide clarification to existing regulatory language, as noted above, and to adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 1302, pursuant to 7 **Del.C.**, Chapters 60 and 63;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.**, Chapter 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the proposed regulatory amendments to 7 **DE Admin. Code** 1302: *Delaware Regulations Governing Hazardous Waste*, will enable the Department's SHWMS to (1) clarify the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training; (2) clarify of the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities; and (3) adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users;

6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1302: *Delaware Regulations Governing Hazardous Waste* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the February 2015 issue of the Register at page 631 (18 DE Reg. 631). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1302 Regulations Governing Hazardous Waste

FINAL REGULATIONS

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 Del.C. §1713(a)(12))
24 DE Admin. Code 1700

ORDER

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline pursuant to 24 Del.C. §1713(a)(12), proposed to revise Regulation 6.0. The proposed change seeks to remove surplusage. Specifically, the proposal removes the words "less than once a quarter" from the regulation as it is unnecessary and renders the regulation's intent unclear.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on June 1, 2014 a public hearing was held on July 22, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*.

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on July 22, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §1713(a)(12) the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed change amends Board Regulation 6.0 and seeks to remove surplusage. Specifically, the proposal removes the words "less than once a quarter" from the regulation as it is unnecessary and renders the regulation's intent unclear.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on May 1, 2015.

IT IS SO ORDERED this 9th day of September, 2014 by the Delaware Board of Medical Licensure and Discipline

George E. Brown, Public Member, President	Joseph M. Parise, D.O., Vice-President
Daryl Sharman, M.D., Secretary	Gregory D. Adams, M.D..
Stephen G. Cooper, M.D. (absent)	Garrett H. Colmorgen, M.D.
Georges A. Dahr, M.D.	Karyl Rattay, M.D. (absent)
Raymond L. Moore, Public Member (absent)	Malvine Richard, Ed.D., Public Member
Barry L. Bakst, D.O.	Vonda Calhoun, Public Member (absent)
Stephen Lawless, M.D.	Leslie C. Ramsey, Public Member (absent)
Mary K. Ryan, Public Member (absent)	N.C. Vasuki, Public Member (absent)

***Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1161 (17 DE Reg. 1161). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1700 Board of Medical Licensure and Discipline

DIVISION OF PROFESSIONAL REGULATION

EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))
24 **DE Admin. Code** 2600

ORDER

2600 Examining Board of Physical Therapists and Athletic Trainers

The Examining Board of Physical Therapists and Athletic Trainers (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §2604(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §2604(a)(1), the Board proposed an amendment to its regulations adding a new Section 14.0 pertaining to the practice of telehealth. This regulation set forth standards and requirements in order to both permit the practice of telehealth, and protect the public.

Pursuant to review of the Board by the Joint Sunset Committee, the Board proposed a new subsection 15.4 pertaining to the practice of dry needling. As a result of the legislative changes to the Board’s licensing law, dry needling is now included within the scope of practice for Physical Therapists. The new subsection 15.4 proposed prerequisites to be met before a Physical Therapist can perform dry needling.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, on December 1, 2014, Volume 18, Issue 6.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

A public hearing on the proposed rule revisions was held on January 27, 2015. Marybeth Glasheen-Wray commented on the proposed telehealth regulations. She inquired if, on the 12th visit, this could be done by video conference. Ms. Glasheen-Wray indicated that for home health in the rural areas of Sussex county especially, if video conference could be used it would help the agencies with resources and time.

On February 11, 2015, Lee Andrew DeLorme provided written comments to the Board. Mr. DeLorme stated that the proposed 25 hours of training for a Physical Therapist to begin performing dry needling is “irresponsible and inadequate” and indicated that although this amount fits within the pre-existing training models, the minimum required hours for training should be increased.

FINDINGS OF FACT

The Board carefully reviewed and considered the proposed rule revisions as well as the public comment received. The Board finds that the evaluating physical therapist must have a face to face visit with the patient every sixth visit. Under the proposed regulations, the first sixth visit can be performed by telehealth, but the second sixth visit must be face to face. Putting your hands on a patient is important and allowing telehealth visits for each sixth visit is not in the best interest of the public. Further, the hour requirement was set after great deliberation by the subcommittee after hearing from stakeholders, including members of the acupuncture community, physical therapists, and medical doctors. Other states require no training, and a great number of states require the same 25 hours proposed here.

The Board, therefore, adopts the proposed revisions to the rules and regulations as published on December 1, 2014 in the *Register of Regulations*, Volume 18, Issue 6.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

TEXT AND CITATION

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 18, Issue 6 on December 1, 2014, attached hereto as Exhibit A.

IT IS SO ORDERED this 24th day of March 2015, by the Examining Board of Physical Therapists and Athletic Trainers.

Jeffrey Schneider, Vice-Chairperson	Waheedah Shabazz
Amy Blansfield	Angela Smith
Prameela Kaza	Samuel Sullivan, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 447 (18 DE Reg. 447). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

2600 Examining Board of Physical Therapists and Athletic Trainers

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

ORDER

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

NATURE AND STAGE OF THE PROCEEDINGS

The Delaware Board of Mental Health and Chemical Dependency Professionals to revise Sections 2.0, 4.0, 5.0, and 9.0. The proposed amendments to the regulations seek to bring the regulations into conformity with the statutory provisions which govern the Board; eliminate regulatory references to the "Academy of Clinical Mental Health Counselors," a non-existent organization; and eliminate regulations stating that professional counselors must obtain licensure by first becoming assistant counselors.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on June 1, 2014 a public hearing was held on August 27, 2014. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on August 27, 2014. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.

2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.

3. Pursuant to 24 Del.C. §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes bring the regulations into conformity with the statutory provisions which govern the Board; eliminate regulatory references to the "Academy of Clinical Mental Health Counselors," a non-existent organization; and eliminate regulations stating that professional counselors must obtain licensure by first becoming assistant counselors.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on May 1, 2015.

SO ORDERED this 24th day of September, 2014.

BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Daniel Cherneski, LMFT, President (absent)

Dr. Tracey Frazier, LCDP, Secretary (absent)

Dr. Gregg Drevno, LPCMH, Vice President

Joan McDonough, Public Member (absent)

Ruth Banta, Public Member

Dr. Julius Mullen, LPCMH (absent)

Irvin Bowers, Public Member

Dr. William Northey, LMFT

Daniel Cooper, LPCMH

Lisa Ritchie, LCDP

Mary Davis, LCDP (absent)

Elizabeth Vassas, Public Member

***Please note that no changes were made to the regulation as originally proposed and published in the June 2014 issue of the *Register* at page 1163 (17 DE Reg. 1163). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

3000 BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 Del.C. §3006(a)(1))
24 DE Admin. Code 3000

ORDER

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

NATURE AND STAGE OF THE PROCEEDINGS

On December 1, 2014, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the Delaware *Register of Regulations*, Volume 18, Issue 6. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 28, 2015 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on January 28, 2015. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.
3. Pursuant to 24 Del.C. §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes seek to eliminate the need for inactive licensees to renew a license while inactive; set forth the specific requirements of direct supervision between LCDP supervisors and supervisees in order to be consistent with the other professions regulated by the Board; allow for direct supervision to take place by videoconferencing for LCDPs and LMFTs; and provide more detailed information regarding the curriculum requirements of LMFT candidates.
5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A.

SO ORDERED this 25th day of March 2015.

BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Daniel Cherneski, LMFT, President (absent)	Dr. Rosemary Madl-Young, LCDP
Dr. Gregg Drevno, LPCMH, Vice Pres. (absent)	Dr. Tracey Frazier, LCDP, Secretary (absent)
Ruth Banta, Public Member	Dr. Julius Mullen, LPCMH
Irvin Bowers, Public Member	Dr. William Northey, Jr., LMFT
Daniel Cooper, LPCMH	Elizabeth Vassas, Public Member (absent)
James Elder, LCDP	

***Please note that no changes were made to the regulation as originally proposed and published in the December 2014 issue of the *Register* at page 451 (18 DE Reg. 451). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

ADMINISTRATIVE OFFICES OF THE COURTS**CHILD PLACEMENT REVIEW BOARD****PUBLIC NOTICE****Regulations Governing the Ivyane D.F. Davis Scholarship**

The State of Delaware's Child Placement Review Board is submitting regulations regarding the administration of the Ivyane Davis D.F. Memorial Scholarship. This Scholarship was established by the General Assembly in June 1989 to provide scholarships for post-secondary education to Delaware residents who have been in foster care in this State. The fund is authorized by Delaware Code, Title 14, Chapter 34; it is the intent and purpose of the General Assembly to provide scholarships in memory of Ivyane D. F. Davis who died February 7, 1989, to deserving Delaware residents who have been placed under foster care in Delaware. This Scholarship is administered by the Child Placement Review Board. The administration of this fund includes monitoring the academic progress of all students as well as a yearly interview and requirement to report expenditures as part of the Child Placement Review Board's Annual Report. This is the first time regulations for this fund have been submitted and was a recommendation from the Joint Sunset Committee in 2012.

There will be no Public Hearing regarding these regulations but Public Comments can be sent, by mail or email to:

Julia M. Pearce
Child Placement Review Board
820 North French Street, 1st Floor
Wilmington, DE 19801
Email: Julia.Pearce@state.de.us

Public comments will be accepted until June 15th, 2015.

DEPARTMENT OF AGRICULTURE**THOROUGHBRED RACING COMMISSION****PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the amended regulations is to adopt the ARCI rule relating to summary suspensions and stays and to amend Commission Regulation 19.6 relating to Continuances. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

A copy of the proposed regulations is being published in the May 1, 2015 edition of the Delaware *Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before June 1, 2015. Written materials submitted will be available for inspection at the above address.

On or after June 1, 2015, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed new rule 18.1.5 relating to summary suspensions, new rule 19.2.2 relating to stays and amended rule 19.6 relating to continuances or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, May 21, 2015 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Medicaid Reimbursement for Prescription Drugs – Multi-State Purchasing Pool Supplemental Drug Rebate Agreement**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 U.S.C., §1902(a)(13)(A) of the Social Security Act, 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)* for pharmaceutical products specifically, *to include Medicaid Managed Care Organization (MCO) utilization for accrual of supplemental rebates.*

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2015.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE**4455 Delaware Regulations Governing a Detailed Plumbing Code**

The Office of Engineering, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing to adopt the 2015 Delaware Plumbing Code. The purpose of the amendments is to update the requirements so that they are in concert with current plumbing standard. Due to the extensive number of amendments the current regulations will be repealed and replaced in their entirety with the proposed regulations being published. On May 1, 2015, the Division plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

A public hearing will be held on Friday, May 29, 2015 at 3:00 p.m. in the Conference Room, located in the Office of Engineering at the Edgehill Shopping Center 43 South DuPont Hwy, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2015 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Engineering at (302) 741-8640.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Doug Lodge P.E., the Division of Public Health by Friday, June 5, 2015 at:

Doug Lodge P.E.
Division of Public Health
Office of Engineering
43 South DuPont Hwy
Dover, DE 19901
Email: doug.lodge@state.de.us

Phone: (302) 741-8640

DIVISION OF PUBLIC HEALTH
AUTHORITY ON RADIATION PROTECTION
PUBLIC NOTICE

Delaware Radiation Control Regulations:
4465 Part D Standards for Protection Against Radiation
4465 Part J Notices, Instructions and Reports to Workers, Inspections

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, is proposing revisions to two sets of Delaware Radiation Control Regulations. The purpose of the amendments is to update the requirements so that they are in concert with current healthcare standards and to align them more closely with current state administrative code and federal requirements. On May 1, 2015, the ARP plans to publish as proposed the amended regulations specified below, and hold them out for public comment per Delaware law.

The Authority on Radiation Protection (ARP), with the Office of Radiation Control, Health Systems Protection Section, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed Delaware Radiation Control Regulations. Due to the extensive number of amendments the ARP has concluded that these two sets of current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

DE Admin Code No.	Current Delaware Citation	Title
4465	Part D	Standards for Protection Against Radiation
4465	Part J	Notices, Instructions and Reports to Workers; Inspections

The public hearing will be held on Wednesday, May 27, 2015 at 2:30 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the May 1, 2015 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov/default.shtml> or by calling the Office of Radiation Control at (302) 744-4546.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Frieda Fisher-Tyler by Monday, June 8, 2015 at:

Frieda Fisher-Tyler
 Division of Public Health
 417 Federal Street
 Dover, DE 19901
 Email: Frieda.Fisher-Tyler@state.de.us
 Phone: (302) 744-4546

DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE
PUBLIC NOTICE
1202 Unemployment Insurance Regulations

The Delaware Department of Labor, Division of Unemployment Insurance proposes this regulation in accordance with Section 3302(17) of Title 19 of the **Delaware Code** to establish procedures for submitting and processing claims for partial unemployment insurance.

The Delaware Department of Labor, Division of Unemployment Insurance solicits written comments from the public concerning the proposed regulation. Any such comments should be submitted to the Director of the Division

of Unemployment Insurance, Thomas H. Ellis, by mail to: Delaware Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809-0950, or by email to: Thomas.Ellis@state.de.us. Written comments must be received by Mr. Ellis on or before **June 1, 2015** to be considered prior to the adoption of the proposed regulation. Copies of the proposed regulation are available upon request.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL
DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE
3700 Shellfish**

The purpose of this action is to provide Delaware's licensed knobbed conch, *Busycon carica*, dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware's knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey's conch dredge landings are an authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum size limit with a five month season from November 15 through April 15 and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5-inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014), does not warrant additional licensing restrictions at this time.

The hearing record on the proposed changes to 7 **DE Admin. Code** §§3710, 3711 and 3712 pertaining to knobbed conch will be open May 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on May 28, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE
PUBLIC NOTICE**

1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Rule 1.0 – Firearms Policy – clarifying the initial course of instruction, the re-qualifications and making provisions for armored car guards; Rule 6.0 – Criminal Offenses – gives the Director the authority to take action when necessary and changes the title names to match the Delaware Code changes; Rule 9.0 – Qualified Manager/License Holder – clarifies what agencies the Delaware manager may work for and gives the minimum law enforcement experience requirement; Rule 11.0 – Personnel Rosters and Job Assignments – requires the private investigative agencies to submit rosters every three months as listed and requires everyone to submit a roster even if there are no employees working in Delaware. If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views

CALENDAR OF EVENTS/HEARING NOTICES

may submit them in writing, by May 31, 2015, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly hearings Thursday, July 9, 2015, 10:00am, at the Tatnall Building, 150 Martin Luther King, Jr. Boulevard South, Room 112, Dover, DE.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
1100 BOARD OF DENTISTRY AND DENTAL HYGIENE

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del.C.** §1106(a)(1), proposes to revise its regulations. The proposed amendments to the regulations seek to clarify the bases and procedures for appeals to the dental and dental hygiene clinical examinations.

The Board will hold a public hearing on the proposed rule change on June 18, 2015 at 3:00 PM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Flora Peer, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until August 3, 2015.

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
1400 BOARD OF ELECTRICAL EXAMINERS

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners has proposed revisions to its rules and regulations. The rules pertaining to liability insurance, continuing education audits, inactive status, homeowner's permits, and exceptions to the license requirement are proposed to be amended.

A public hearing will be held on June 3, 2015 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be 15 days following the public hearing.

DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND POLICY
PUBLIC NOTICE

2309 Standards and Regulations for Subdivision Streets and State Highway Access

As authorized under 17 **Del.C.** §§132(e), 507, 508, and 29 **Del.C.** §8404(8), inter alia, the Delaware Department of Transportation, ("DelDOT"), through its Division of Planning and Public Policy, seeks to adopt general revisions to its existing regulations regarding development coordination.

The current regulations were enacted in March of 2015. The proposed regulations address some sections of the manual that were inadvertently changed during final adoption as well as proposed regulations that address procedural changes in the way we do business, and the addition of clarifying language. The changes take into account the issues and concerns identified and addressed as needing amendment by not only DelDOT staff, but also the end users of the current regulations.

DelDOT will take written comments on these proposed general revisions to Section 2309 of title 2, Delaware Administrative Code, from May 1, 2015 through May 31, 2015. The public may submit their comments to:

Marc Coté, P.E., Assistant Director, Planning Development Coordination via email (Marc.Cote@state.de.us) or in writing to his attention:

Division of Planning
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
